Colorado Register

46 CR 22

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Introduction

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

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

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

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

Notice of Proposed Rulemaking

Tracking number

2023-00752

Department

200 - Department of Revenue

Agency

207 - Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-1

Rule title

GAMING REGULATIONS

Rulemaking Hearing

Date

12/21/2023

Time

09:15 AM

Location

1707 Cole Blvd, Redrocks Conference Room, Lakewood, CO 80401, and virtually

Subjects and issues involved

Aces Up Gaming is the owner of the game 3 Card Shine, which is Regulation 30-1099.52 in the Gaming Rules and Regulations. They have requested that we change the name of the game from 3 Chard Shine to 3 Card +.

Statutory authority

Sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., 44-30-816, C.R.S., and 44-30-818, C.R.S.

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BASIS AND PURPOSE FOR RULE 10

The purpose of Rule 10 is to establish playing rules for authorized types of poker and management procedures for conducting poker games in compliance with section 44-30-302 (2), C.R.S. The statutory basis for Rule 10 is found in sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., 44-30-816, C.R.S., and 44-30-818, C.R.S. *Amended 8/14/16*

RULE 10 RULES FOR POKER

30-1099.52 The play – 3 Card ~~Shine~~ +. *Effective 8/14/20*

3 Card ~~Shine~~ + poker is a variation poker game, the rights to which are owned by ~~a~~Aces ~~u~~Up ~~g~~Gaming. 3 Card Shine Poker must be played according to the following rules:

(1) 3 Card ~~Shine~~ + Poker may be played only on tables utilizing a 3 Card ~~Shine~~ + Poker style table layout. The game shall be played using one standard 52 card deck. The rank of hands in 3 Card ~~Shine~~ + Poker, from highest to lowest, is: 3 aces, straight flush, three of a kind, straight, flush, pair, and high card. Each player may play a maximum of two hands following each shuffle of the deck.

Notice of Proposed Rulemaking

Tracking number

2023-00760

Department

1200 - Department of Agriculture

Agency

1204 - Markets Division

CCR number

8 CCR 1204-10

Rule title

Rules Pertaining to the Small Food Business Recovery and Resiliency Tax Credit

Rulemaking Hearing

Date

12/15/2023

Time

10:00 AM

Location

via Zoom - link is contained in the hearing notice

Subjects and issues involved

The purpose of these rules is to establish deadlines and identify the order in which the Department will issue tax credits in accordance with HB 23-1008. Also, to provide general direction to applicants for both letters of eligibility and tax credit certificates related to deadlines, required documentation, and methods of demonstrating effects on improving lower prices for healthy foods in low-income and underserved areas of the state.

Statutory authority

39-22-549(4)(a), (5)(e), and (9), C.R.S.

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COLORADO
Department of Agriculture

NOTICE OF PUBLIC RULEMAKING HEARING

FOR THE ADOPTION OF NEW RULES

"Rules Pertaining to the Small Food Business Recovery and Resiliency Tax Credit"

8 CCR 1204-10

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE: December 15, 2023
TIME: 10:00 a.m.
LOCATION: This hearing will be held via Zoom
CALL INFORMATION: 1-719-359-4580
Meeting ID: 816 2223 2925
Passcode: 215233

In order to maintain a proper hearing record you are encouraged to pre-register by completing this Google form. If you do not have access to Google you may send your name and telephone number to Hollis.Glenn@state.co.us
Pre-registration is not required to participate in the hearing.

The purpose of these rules is to establish deadlines and identify the order in which the Department will issue tax credits in accordance with HB 23-1008. Also, to provide general direction to applicants for both letters of eligibility and tax credit certificates related to deadlines, required documentation, and methods of demonstrating effects on improving lower prices for healthy foods in low-income and underserved areas of the state.

The statutory authority for these rules is §§ 39-22-549(4)(a), (5)(e), and (9), C.R.S.

Any interested party may file written comment with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at Hollis.Glenn@state.co.us. A copy of the proposed rule is available on the Department of Agriculture's website at www.colorado.gov/ag or may be obtained by calling 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.

DEPARTMENT OF AGRICULTURE

Markets Division

RULES PERTAINING TO THE SMALL FOOD BUSINESS RECOVERY AND RESILIENCY TAX CREDIT

8 CCR 1204-10

1. Definitions

1.1. "Amount Certain Spent by the Member of the Consortium on Completing its Duties and Responsibilities of the Consortium" or "Amount Certain" means the amount spent on pallet, pallet break, distribution, and delivery fees that is eligible for a subsidy from the Consortium but is not otherwise covered by the Consortium.

1.2. "Community Food Access Program (CFA Program or Program)" means the program created in section 35-1-117, C.R.S., to improve access to and lower prices for healthy foods in low-income and underserved areas of the state.

1.3. "Community Food Consortium (Consortium)" means the community food consortium created in section 35-1-117(8)(a), C.R.S.

1.4. "Department" or "CDA" means the Colorado Department of Agriculture created in section 35-1-103, C.R.S.

1.5. "Duties and Responsibilities" means the duties and responsibilities of the members of the consortium pursuant to section 35-1-117(2)(a), C.R.S.

1.6. "Farm Direct Operation" means a farm that produces and sells Colorado grown or raised products directly to consumers.

1.7. "Grant Award" means a contractual award of funds through the Small Food Business Recovery and Resilience Grant Program.

1.8. "Grant Program" or "CFA Grant Program" means the Small Food Business Recovery and Resilience Grant Program created in section 35-1-117(3)(a), C.R.S.

1.9. "Limited Supermarket Access Area" means an area where households have inadequate and inequitable access to supermarkets, based on income, distance to existing stores, and car ownership rates.

1.10. "Member of the Consortium" means any member of the community food consortium for small food retailers and Colorado-owned and Colorado-operated farms created in section 35-1-117(2)(a), C.R.S.

1.11. "Purchase Price" means the amount actually paid by the purchaser for the small food business recovery and resilience grant program equipment, including charges for sales tax and freight, but not including any charges for assembly, installation, other construction services, or permit fees.

1.12. "Purchaser" means a small food retailer or small family farm that purchases small food business recovery and resilience grant program equipment.

1.13. “Qualified Census Tract” means any census tract that is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income that is less than 60 percent of the area median gross income for such year or that has a poverty rate of at least 25 percent.

1.14. “Rural” means any population, housing, or territory not in an urban area as defined in this rule.

1.15. “Small Family Farm” has the same meaning as set forth in section 35-1-117(8)(d), C.R.S.

1.16. “Small food business recovery and resilience grant program equipment” or “Equipment” means the items listed in section 35-1-117(3)(a)(II) and(3)(a)(IV), C.R.S.

1.17. “Small Food Retailer” has the same meaning as set forth in section 35-1-117(8)(e), C.R.S.

1.18. “SNAP” means the supplemental nutrition assistance program established in part 3 of article 2 of title 26 of the Colorado Revised Statutes.

1.19. “Urban” means a densely settled core of census blocks that encompasses at least 2,000 housing units or that has a population of at least 5,000 people or that is identified in the 2020 “Census Qualifying Urban Areas and Final Criteria Clarifications,” adopted by reference herein (87 Federal Register Vol. 87, No. 249, 80114; effective December 29, 2022). Material incorporated by reference does not include any later amendments or editions of the incorporated material. Copies of material incorporated by reference are available for public inspection during regular business hours and may be obtained at a reasonable charge or examined by contacting the Markets Division, Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021. Further, the incorporated material may be examined at no cost on the Internet at: https://www.federalregister.gov/documents/2022/12/29/2022-28286/2020-census-qualifying-urban-areas-and-final-criteria-clarifications.

1.20. “WIC” has the meaning set forth in section 35-1-117(8)(g), C.R.S.

2. Tax Credit Certificates Annual Allocation

2.1. The Department may issue up to $10 million annually in Tax Credits Certificates commencing on or after January 1, 2024, but before January 1, 2031, in accordance with section 39-22-549 (3)(a), C.R.S.

2.2. On the first of each month, the Department will post on the Community Food Access Program website, www.ag.colorado.gov/CFA, the total aggregate amount of Tax Credit Certificates issued for each calendar year and the total amount of aggregate tax credit applications currently under review. Applicants are encouraged to check the availability of tax credits for each calendar year frequently and before incurring any Amounts Certain or expenses for Equipment.

3. Tax Credit Letter of Eligibility — Submission, Review, and Issuance

3.1. A Member of the Consortium or a Purchaser may submit an application to the Department for a letter of eligibility for a tax credit certificate to determine whether any proposed expense would qualify before incurring that expense.

3.2. The application must include a certification that the applicant is either:

3.2.1. a Purchaser who is a small food retailer or small family farm that purchased small food business recovery and resilience grant program equipment; or

3.2.2. a Member of the Consortium that spent an Amount Certain on completing its duties and responsibilities.

3.3. The application must also include detailed information regarding:

3.3.1. the Purchase Price that would be incurred by a Purchaser and the date on which the purchase would be made, including any portion covered by a Grant Award received through the Small Food Business Recovery Resilience Grant Program or other grant, loan, or funding source; or

3.3.2. an itemized total of the Amount Certain that a Member of the Consortium would spend on completing its Duties and Responsibilities, minus any amount already provided by the Consortium, and the date or dates on which the Member of the Consortium would spend the amounts.

3.4. Interested individuals will find applications for a Letter of Eligibility on the Community Food Access Program website at www.ag.colorado.gov/CFA.

3.5. A Letter of Eligibility does not guarantee that an applicant for a Tax Credit Certificate will receive a Tax Credit Certificate. Applicants must submit a full application for a tax-credit certificate separately, pursuant to Part 4 of this rule, for the Department's review and consideration after the applicant has incurred the proposed expense.

3.6. An applicant must submit a complete Letter of Eligibility application and provide all required supporting documentation before the Department may determine if the Duties and Responsibilities or Equipment purchased would qualify for a tax credit certificate if purchased. The Department will notify applicants in writing if their application is incomplete.

3.7. The Department will review the Letter of Eligibility application and issue a decision in writing to approve, deny, or seek additional clarification from the applicant. If the Department requests additional clarification or documentation, the applicant will have 10 business days to provide the requested information, after which the Letter of Eligibility application will be deemed abandoned by the applicant and denied. Applicants can request an extension of this deadline in writing or submit a revised application for a Letter of Eligibility at a later date. Any such request must be made in writing (by e-mail or post) and received by the Department no later than three business days before the deadline to provide the requested information.

3.8. Decisions based on statutory requirements are not appealable.

4. Tax Credit Certificate Application – Submission, Review, and Issuance

4.1. The Department will post the application for a Tax Credit Certificate on the Community Food Access Program website: www.ag.colorado.gov/CFA.

4.2. There will be three application periods in each calendar year, as determined by the Department and announced on the Department's website: ag.colorado.gov/CFA upon the effective date of this rule and thereafter no later than January 1 of each calendar year.

4.3. Pursuant to subsection 5, this section 4.3 sets forth the order in which the Department will issue Tax Credit Certificates within each application period.

4.3.1. Group 1: Members of the Consortium for completing their Duties and Responsibilities; rural applications will be reviewed before urban applications;

4.3.2. Group 2: Purchasers that have not received any other tax credits as a result of purchasing small food business recovery and resilience grant program equipment and that can demonstrate the greatest improvement to access to and lower prices for healthy foods in low-income and underserved areas of the state; rural applications will be reviewed before urban applications;

4.3.3. Group 3: Purchasers that have not yet received a tax credit as a result of purchasing small food business recovery and resilience grant program equipment in the calendar year for which the tax credit is sought and that can demonstrate the greatest improvement to access to and lower prices for healthy foods in low-income and underserved areas of the state; rural applications will be reviewed before urban applications; and

4.3.4. Group 4: All other applications, in order of who can demonstrate the greatest improvement to access to and lower prices for healthy foods in low-income and underserved areas of the state, in order from smallest amount requested to largest; rural applications will be reviewed before urban applications.

4.3.5. Group 5: Any applicant that previously received a Tax Credit Certificate but mis-used Equipment in a way that did not conform to the applicant's intent as provided in its application or performed Duties and Responsibilities of the Consortium in a manner that did not conform to the actual Duties and Responsibilities of the Consortium.

4.4. Within each category listed in 4.3, applications will be reviewed in the order received, based on the date and time the Department receives a complete application.

4.5. An applicant must submit a complete Tax Credit Certificate application and provide all required supporting documentation before the application deadline. After the application deadline, the Department will notify applicants in writing if their application is incomplete.

4.5.1. An applicant will have 15 business days from the day the Department notifies the applicant that the applicant's application is incomplete to correct any deficiencies, after which the Department will deny the application in full. An applicant must then resubmit the applicant's application with complete documentation during the next application cycle, which will then be reviewed based on the new date and time received by the Department.

4.6. To receive a Tax Credit Certificate, an applicant must provide supporting documentation of the following:

4.6.1. The income tax year in which the applicant will claim a tax credit; and

4.6.2. The price and date of any equipment purchased, including any portion of covered by a Grant Award, received through the Small Food Business Recovery Resilience Grant Program; or

4.6.3. An itemized total and date or dates of purchase of any amount spent by a Member of the Consortium on pallet, pallet break, distribution, or delivery fees that are not otherwise covered by the Consortium.

4.6.3.1. Costs related to pallet, pallet break, distribution and delivery fees must be verified with supporting documentation, such as an itemized invoice, price sheet, or contract with a distributor.

4.7. If applicable, an applicant may submit the applicant's Letter of Eligibility along with a Tax Credit Certificate application.

4.8. The Department will inform an applicant of the Department's decision to approve or deny a Tax Credit Certificate by email within 90 calendar days from the date a completed application is received.

4.9. The Department will deny applications for a Tax Credit Certificate in any tax year in which the Department has committed ten million dollars. An eligible business may only receive a tax credit in the year in which the applicant incurred the eligible expense.

4.10. Upon approval, the Department will issue a Tax Credit Certificate with a designated reference number, which the applicant must attach to the applicant's state tax filing return for the applicable tax year. An applicant is responsible for submitting all necessary documents to the Colorado Department of Revenue to receive a tax credit. Tax Credit Certificates are not transferable.

4.11. Decisions based on statutory requirements are not appealable.

5. An applicant may demonstrate improvement to access and lower prices for healthy foods in low-income and underserved areas of the state by:

5.1. Demonstrating that the geographical area the applicant serves:

5.1.1. Has no access to a grocery store at less than half-mile intervals in an urban area; or

5.1.2. Has no access to a grocery store at less than 10 miles in a rural area and is within a United States census tract whose poverty rate is 20 percent or greater; or

5.1.3. Is within a United States census tract where the median family income is less than or equal to 80 percent of Colorado's state-wide median family income; or

5.1.4. Is within a United States census tract in a metropolitan area where the median family income is less than or equal to 80 percent of that metropolitan area's median family income.

5.2. Demonstrating whether the applicant operates or serves areas located in a census tract adjacent to a census tract meeting the above criteria with median family income less than or equal to 120 percent of area median family income;

5.3. Demonstrating whether the applicant operates or serves areas located in a Limited Supermarket Access Area;

5.4. Demonstrating whether the applicant operates or serves an area operated by a Tribal government or on Tribal Lands;

5.5. Demonstrating whether the applicant operates or serves a particular Qualified Census Tract; or

5.6. Providing a narrative explanation to establish any other factors that the applicant believes should qualify as operating or serving in a low-income, low-access community, including by use of locally aggregated data.

6. Tax Credit Certification Requirements

6.1. At the time of application for a tax credit, a Purchaser or Member of the Consortium must certify that the applicant is either:

6.1.1. A Member of the Consortium that spent an Amount Certain on completing its duties and responsibilities; or

6.1.2. A Purchaser who is a small food retailer or small family farm that purchased Equipment.

7. Eligible and non-eligible costly small food business recovery and resilience grant program equipment purchases include:

7.1. Eligible Equipment Expenses:

7.1.1. Cold Storage: Refrigeration and freezer units (consumer-facing or storage);

7.1.2. Display shelving and display cases;

7.1.3. Produce scales;

7.1.4. Food preservation equipment in order to extend the availability of healthy food for customers beyond the local harvest or slaughter calendar;

7.1.5. Deli slicers and meat grinders for fresh meat;

7.1.6. Dry storage containers;

7.1.7. Delivery trucks that will be primarily used for the transportation of healthy food to low-income, underserved areas of the state (refrigerated or standard vehicles); and

7.1.8. New or used farming and ranching equipment including but not limited to equipment that is essential for planting, raising food-producing animals, harvesting, packing, storing, extending the growing season, and shipping healthy food.

7.1.9. Equipment the Commissioner determines will contribute to the state's effort to improve access to and lower prices for healthy foods in low-income and underserved areas of the state by supporting small food retailers and small family farms.

7.2. Non-Eligible Equipment Purchases:

7.2.1. Storage or retail display equipment for alcoholic beverages, soft drinks, sports and energy drinks or cannabis products;

7.2.2. Vending machines that do not offer healthy food;

7.2.3. Storage or equipment for prepared foods.

7.3. Purchasing or Updating Point of Sales (POS) Equipment for Food Incentive Programs

7.3.1. Eligible Purchasing or Updating Point of Sales Equipment

7.3.1.1. New POS systems, including software, hardware, monitors, printers, and incidental supplies that are directly related to implementing or improving SNAP, WIC, or other food incentive programs; and

7.3.1.2. Upgrades to existing POS systems.

7.3.2. Non-Eligible Purchasing or Updating Point of Sales Equipment for Food Incentive Programs:

7.3.2.1. POS systems that are not equipped to accept SNAP or WIC.

8. General Provisions

8.1. Applicants are responsible for complying with any applicable local, state, or federal food safety standards and for operating within the scope of any necessary license, registration, or permit. Applicants are responsible for obtaining any necessary local, state, or federal regulatory review for any improvements made to any existing facilities.

8.2. A Purchaser of Equipment that receives a Tax Credit Certificate understands and agrees that the Department may conduct a site inspection to confirm that the Purchaser's use of the Equipment conforms to the Purchaser's intent, as provided in its application.

9. Statement of Basis, Specific Statutory Authority, and Purpose

9.1 Adopted January 17, 2024; Effective March 16, 2024

The Commissioner of Agriculture adopts these rules pursuant to the authority granted the Department of Agriculture at 39-22-549(4)(a), (5)(e), and (9), C.R.S.

HB 23-1008, created a tax credit to induce designated tax-payer behavior, specifically: purchasing and use of small food business recovery and resilience grant program equipment and increasing the activities of the community food consortium for small food retailers and Colorado-owned and Colorado-operated farms. This tax credit is designed to contribute to the state's efforts to improve access to and lower prices for healthy foods in low-income and underserved areas of the state by supporting small food retailers and small family farms. See 3-22-549(1)(a)(I) and (1)(a)(II), C.R.S.

These rules establish the deadlines both for applications for letters of eligibility and for applications for tax credit certificates. A letter of eligibility permits those who may incur costs to determine, in advance, whether such costs would qualify for a tax credit. A tax-credit certificate is an approval issued by the Department after any eligible equipment purchase has been made and which may be applied by the applicant as a credit against that person's income taxes for the tax year in which the purchase was made. Section 39-22-549(4)(a) and (5)(a), C.R.S.

These rules identify the order in which the Department will issue tax credits, identifying an order that will permit the Department to organize its awards based on factors that prioritize Duties and Responsibilities of Consortium members; rural- over urban-related expenses; applicants who have not received any previous tax credits; and applicants who can demonstrate the greatest improvement to and lower prices for healthy foods in low-income and underserved areas of the state, consistent with the state's efforts to improve access to and lower prices for healthy foods in low-income and underserved areas of the state by supporting small food retailers and small family farms.

Finally, these rules provide general direction to applicants for both letters of eligibility and tax credit certificates related to deadlines, required documentation, and methods of demonstrating effects on improving lower prices for healthy foods in low-income and underserved areas of the state.

Notice of Proposed Rulemaking

Tracking number

2023-00758

Department

1300 - Department of Local Affairs

Agency

1302 - Division of Housing

CCR number

8 CCR 1302-14

Rule title

NON-RESIDENTIAL AND RESIDENTIAL FACTORY-BUILT STRUCTURES AND TINY HOMES; SELLERS OF MANUFACTURED HOMES AND TINY HOMES; MANUFACTURED HOME, TINY HOME, AND MULTI-FAMILY STRUCTURE INSTALLATIONS

Rulemaking Hearing

Date

12/19/2023

Time

01:00 PM

Location

Virtual

Subjects and issues involved

This rulemaking will make permanent an emergency rule that was adopted by the State Housing Board on 10/24/2023 that allows modifications to the state approved building codes for factory-built structures when a local jurisdiction or the state has declared a state of emergency, and the jurisdiction requests the modification to the standards in writing. Rule 2.15.3 is the addition. There are no other changes to the rules.

Statutory authority

Pursuant to sections 24-32-3301(1), 24-32-3301(2), 24-32-3302(3), 24-32-3303(1)(d), 24-32-3304(1)(d), 24-32-3304(1)(e), 24-32-3304(f), 24-32-3305, 24-32-3307(1)(a)(I), 24-32-3307(1)(a)(II), 24-32-3307(2), 24-32-3308(1), 24-32-3309(1)(a), 24-32-3311(a.3), 24-32-3315(2), 24-32-3315(4)(c), 24-32-3315(6), 24-32-3317(2.3), 24-32-3317(5)(a), 24-32-3317(8), 24-32-3317(10), 24-32-3323(3), 24-32-3324(1), 24-32-3324(2), and 24-32-3325(1)(b), 24-32-3326 (2), 24-32-3328 C.R.S.

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DEPARTMENT OF LOCAL AFFAIRS

Division of Housing

NON-RESIDENTIAL AND RESIDENTIAL FACTORY-BUILT STRUCTURES AND TINY HOMES; SELLERS OF MANUFACTURED HOMES AND TINY HOMES; MANUFACTURED HOME, TINY HOME, AND MULTI-FAMILY STRUCTURE INSTALLATIONS; FOUNDATION SYSTEMS FOR MANUFACTURED HOMES, TINY HOMES, AND FACTORY-BUILT STRUCTURES WHERE NO STANDARDS EXIST; AND HOTELS, MOTELS, AND MULTI-FAMILY STRUCTURES IN THOSE AREAS OF THE STATE WHERE NO STANDARDS EXIST

8 CCR 1302-14

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

Rule 1. Definitions.

In addition to the definitions provided in section 24-32-3302, C.R.S., the following definitions apply to these rules:

1.1 "Authorized quality assurance representative" as defined in section 24-32-3302(1), C.R.S., means a "third party agency" (defined in Rule 1.30 below) approved by the Division of Housing.

1.2 "Alternative Construction" or "AC" has been replaced with "On-site Construction (OC)" in Rule 1.19 .This definition has been left in since there are number of forms and documents circulating with this legacy term.

1.3 "Authority Having Jurisdiction" or "AHJ" means the local government's building department with oversight over where the structure is to be located.

1.4 "Built-for-Purpose Trailer" means a vehicle trailer that is built to serve as a construction platform for a tiny home and has: a Vehicle Identification Number (VIN), a Gross Vehicle Weight Rating (GVWR), and is capable of sustaining and moving a tiny home.

1.5 "Certificate of Occupancy" means a certificate issued by the Division of Housing stating at the time of issuance the structure was built in compliance with all applicable codes and construction standards adopted by the State Housing Board. It only applies to motels, hotels, and multi-family structures in those areas of the state where no such standards exist.

1.6 "Certified Inspector" means one of the following individuals authorized by the Division of Housing:

1.6.1 An "independent contractor" as defined pursuant to section 24-32-3302(15), C.R.S., that is authorized by the Division of Housing to perform or enforce installation inspections,

1.6.2 An employee of a "state" or "firm" as used in the definition of a "quality assurance representative" pursuant to section 24-32-3302(30), C.R.S., and further defined in Rule 1.30 .2 of these rules, or

1.6.3 A Colorado licensed engineer that is authorized by the Division of Housing to perform an On-site Construction inspection and oversight manufacturer inspection.

1.7 "Closed Panel System" means a building component or assembly built off-site that may include electrical, plumbing, mechanical, or insulation with finishes applied to both sides and then transported to be erected on-site to complete a residential or nonresidential building.

1.8 "Conflict of Interest" means when there is personal or private interest(s) sufficient to influence or appear to influence the proper exercise of duties or responsibilities.

1.9 "Direct On-site Supervision" as used in section 24-32-3315(1)(b)(I), C.R.S., means the registered or certified installer must be present at the installation "site" as defined by section 24-32-3302(33), C.R.S., and readily available to properly supervise installation work as defined by section 24-32-3302(16), C.R.S., that is performed by an employee not registered or certified as an installer.

1.10 "Down payment(s)" as used in section 24-32-3325(2)(b), C.R.S, and rules 5.2, 5.3, 5.8, and 5.9, means all money given by a purchaser to a seller for the purchase of a manufactured home or tiny home before the manufactured home or tiny home is delivered.

1.11 "Factory-built" means the construction of nonresidential structures or residential structures (modular homes, tiny homes, or multi-family structures) that occurs at an offsite location (e.g. manufacturing plant, small business space or school workshop, or private barn), separate from the site where the structure is to be installed.

1.12 "Firm" as used in the definition of an "independent contractor" pursuant to section 24-32-3302(15), C.R.S., and in the definition of a "quality assurance representative" pursuant to section 24-32-3302(30), C.R.S., means a "third party agency" (defined in Rule 1.30 below).

1.13 "HUD-code Home" means a manufactured home constructed in compliance with the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., and any standard promulgated by the Secretary of the U.S. Department of Housing and Urban Development (HUD) pursuant to that federal act.

1.14 "Individual" as used in the definition of an "independent contractor" pursuant to section 24-32-3302(15), C.R.S., means a Colorado licensed professional engineer (PE) or architect authorized by the Division of Housing to perform or enforce installation inspections.

1.15 "Insignia" means a seal, label, or tag issued by the Division of Housing that when permanently affixed to a structure confirms compliance as one of the following:

1.15.1 An "insignia of approval" pursuant to sections 24-32-3303(1)(c), 24-32-3310, 24-32-3311(a), 24-32-3311(a.5), 24-32-3311(1)(b), 24-32-3311(4), 24-32-3311(5), C.R.S., issued by the Division of Housing or an "authorized quality assurance representative" pursuant to sections 24-32-3302(1), 24-32-3303(1)(c), 24-32-3304(1)(e), 24-32-3311(1)(a), 24-32-3311(1)(b), 24-32-3311(4), and 24-32-3311(5), C.R.S., verifies that a factory built structure is deemed to be designed and constructed in compliance with the requirements of all codes and standards enacted or adopted by the state and accounts for any local government installation requirements.

1.15.2 A "certificate of installation" as defined pursuant to section 24-32-3302(3), C.R.S., and issued by the Division of Housing or a party authorized by the Division of Housing, verifies compliance with the installation standards established by the State Housing Board in Rule 2.12 through 2.14 of these rules.

1.16 "Installation Authorization" pursuant to sections 24-32-3317(1), 24-32-3317(2), and 24-32-3317(4), C.R.S., means a Division of Housing approved form posted on the site of an installation, located beyond the authority of a "participating jurisdiction" as defined in Rule 1.18, verifying that

the home owner or registered installer has made application with the Division of Housing to install a manufactured home or a tiny home and has received authorization to install it, or that the home will be installed by a certified installer who has automatic authorization to do so under their certified status.

1.17 "Multi-family structure(s)" means a structure containing at least three independent dwelling units within an International Building Code (IBC) Group R-2, R-3, or R-4 building or within an International Residential Code (IRC) Townhouse building. Such buildings are limited to apartments, condominiums, live work units, vacation time shares, and other similar uses with independent dwelling units where the building is used, intended, or designed to be built, used, rented, leased, let, or hired out to be occupied or that are occupied for living purposes.

1.18 "Occupancy" or "Occupied" means a factory-built structure, manufactured home, or tiny home designed, built, modified, or used with the intent for individuals to enter.

1.19 "On-site Construction" or "OC" means on-site construction or modification of the factory-built structure that directly relates to the durability, quality, and safety; that is completed at the installation "site" as defined by section 24-32-3302(33), C.R.S.; using components not installed at the manufacturer's location; and to complete the compliance of that structure as reflected in the Division of Housing approved plans. These items do not include the component(s) required for setting and securing the structure for its installation.

1.20 "Open Construction" means any building component, assembly, or system manufactured in such a manner that all concealed parts or processes of manufacture can be readily inspected at the building site without disassembly, damage, or destruction, i.e., panelized construction assembled on site. Note: Assembled rooms or spaces, panels with finishes applied to both sides and electrical wiring in conduit are not open construction, but rather a "closed panel system" as defined pursuant to Rule 1.7.

1.21 "Participating Jurisdiction" means a "local government" as defined pursuant to section 24-32-3302(18), C.R.S., which has agreed to administer and inspect manufactured housing installations within the legal boundaries of the jurisdiction and in compliance with the manufactured home, multi-family, and tiny home installation standards established by the State Housing Board in rules 2.12 through 2.14 of these rules.

1.22 "Permanent Foundation" as defined in section 24-32-3302(26.5) C.R.S, is further defined to account for point loads of the structure to the ground, prevent lateral movement and overturning of the structure, and provide frost protection. Local government building departments are responsible for design review and approval of permanent foundations. For areas of the state without a local government building department, the Division of Housing will review and approve permanent foundations designed by a Colorado licensed design professional.

1.23 "Plan" means a specific design for the construction of a structure submitted by the manufacturer to the Division of Housing for review and approval that typically includes a floor plan, elevation drawings, structural pages, electrical circuit layouts, recommended foundation drawings, mechanical drawings, plumbing isometrics, cross section drawings, an energy code compliance report, heat load calculations, and the engineering calculations.

1.24 "Quality Control Procedures" means procedures prepared by a manufacturer for each of its manufacturing facilities and approved by the Division of Housing or "third party agency" (defined in Rule 1.30. below) describing the method that the manufacturer uses to assure structures produced by that manufacturer are in conformance with the applicable standards, codes, and approved plans.

1.25 "Red Tag Notice" means a physical identification posted visibly on a particular structure indicating that it is in violation of applicable state statutes, federal law, or these rules. A structure posted with this notice cannot be sold, offered for sale, nor have occupancy in Colorado.

1.26 "Remote Inspection" means a production inspection performed where the inspector is in a location other than the location where the structure is being manufactured using a computer having an internet or cellular connection to communicate with a manufacturer's representative responsible for quality control. The manufacturer's representative responsible for quality control shall utilize a smart device (cell phone, tablet, etc.). The inspection must be performed in "real time" with continuous live stream video from the manufacturing location, and two-way audio. Each inspection must be securely stored on the internet and retrievable by VIN, serial number, insignia number or other approved identifier. Remote inspections may only be conducted by an approved Third Party Agency".

1.27 "State Administrative Agency" or "SAA" means the Building Codes & Standards Section of the Department of Local Affairs' Division of Housing which has been approved or conditionally approved by the federal government to carry out its state plan for enforcement of its standards pursuant to Rule 2.8 of these rules.

1.28 "Temperature Sensitive Equipment" means equipment or instrumentation whose performance or lifespan can change due to changes in the ambient temperature surrounding that equipment or instrumentation.

1.29 "Temporary Foundation" As defined in section 24-32-3302(34) C.R.S., is further defined to clarify that local government building departments are responsible for design review and approval of temporary foundations. For areas of the state without a local government building department, the Division of Housing will review and approve temporary foundation designed by a Colorado licensed design professional.

1.30 "Third Party Agency" means one of the following entities authorized by the Division of Housing:

1.30.1 "Firm" as used in the definition of an "independent contractor" pursuant to section 24-32-3302(15), C.R.S., to perform or enforce installation inspections, or

1.30.2 "State" or "firm" as used in the definition of a "quality assurance representative" pursuant to section 24-32-3302(30), C.R.S., to:

(A) Inspect a manufacturer's registered or certified facility by conducting a "production review" pursuant to section 24-32-3302(28), C.R.S., in order to determine its ability to follow a building "plan" approved by the Division of Housing and the construction standards and codes adopted by the State Housing Board, evaluating a manufacturer's "quality control procedures", and performing design evaluations;

(B) Inspect a factory-built structure or tiny home at seller lots or on site as part of an oversight inspection of a registered factory, random audit inspection of a certified factory, or an on-site construction (OC) inspection to ensure compliance with construction standards and codes adopted by the State Housing Board; and

(C) Certify a manufacturer's factory-built structure or tiny home by affixing an insignia of approval issued by the Division of Housing deeming it to be designed and constructed in compliance with the requirements of all codes and standards enacted or adopted by the State and accounting for any local government installation requirements adopted in compliance with sections 24-32-3310 and 24-32-3318.

1.31 "Tiny House" is distinct from a "tiny home" as defined pursuant to section 24-32-3302(35), C.R.S. in that a "tiny house" as defined in Appendix Q of the 2018 International Residential Code shall be installed on a permanent foundation.

1.32 "Vehicle Chassis" means the base frame of a single-family dwelling, designed and constructed for long-term occupancy that supports the home's construction and transportation, and includes axles, wheels, GVWR and a VIN.

1.33 "Wildfire Risk" means local building codes applied to meet the intent of the International Wildland-Urban Interface Code per Chapter 5 – Special Building Construction Regulations.

Rule 2. Codes and Standards

Pursuant to sections 24-32-3303(1), 24-32-3304(1)(a) and (b), and section 24-32-3305(2), C.R.S., the State Housing Board hereby adopts and incorporates by reference the following nationally recognized codes, standards, guidelines, procedures, or rules in their entirety, except for the revisions, additions, deletions, or exceptions/exemptions specified below. The incorporated codes, standards, guidelines, procedures, or rules do not include later revisions. They are readily available for public inspection in written format during the regular business hours at the Division of Housing, Building Codes and Standards Section, 1313 Sherman Street, Suite 320, Denver, CO 80203. Paper copies are available for a reasonable fee paid to the Division of Housing. Electronic copies are available from the agencies originally issuing them as noted below.

Building Codes for Factory-Built Residential Structures and Tiny Homes; Factory-Built Nonresidential Structures; and Site-Built Hotels, Motels, and Multi-Family Structures in those areas of the State where no Standards Exist

Manufacturers are permitted to use the construction codes in effect prior to the adoption of any new code for a maximum of 180 days after the amendment in rule takes effect. The Program Manager for the Building Codes & Standards Section, the Director of the Office of Regulatory Oversight, the Deputy Division Director, or the Division Director is authorized to grant, in writing, one extension, for a period not more than 180 days.

2.1 The International Building Code (IBC), 2018 Edition, published by the International Code Council, Inc. (ICC). This is a safety code and is available through the ICC at: https://www.iccsafe.org.

2.1.1 **Section 105.2 Work exempt from permit**

Add the following exceptions prior to "Building:"

2.1.1.1 **Equipment Enclosures:**

One story detached buildings designed to protect equipment from heat, weather elements, or damage that:

- Do not exceed 500 sq. ft.,
- Are not connected to a permanent source of power,
- Are not classified as an electrical hazardous area per Article 500 of the NEC (is a nonhazardous area), and
- Are not installed on a permanent foundation.

A building that in its entirety operates as a listed product is automatically exempt as long as the manufacturer is able to demonstrate it is labeled as such.

2.1.1.2 **Building Components:**

A building component, assembly, or system constructed in the factory as open construction (see definitions).

The above exemptions from approval through the State factory-built program do not grant any exemption from local jurisdiction requirements or state electrical or plumbing requirements. The above exemptions do not grant authorization for any work to be done in a manner that is in violation of the provisions of the adopted codes.

2.1.2 **Section 901.2 Fire Protection systems**

Add the following new section:

2.1.2.1 **Section 901.2.1 Certified inspector required**

An automatic fire sprinkler system shall be installed in buildings as required by the local jurisdiction where the structure will be set. Final tests required by this Section shall be approved by a certified inspector as required by a local jurisdiction. The inspector must be either an employee of the fire department having jurisdiction or another qualified individual with prior approval of the Colorado Division of Fire Prevention & Control.

2.1.3 **Section 907.2.10.2 (1) Smoke Alarms – Location**

Revise “immediate vicinity” to read “within 15 feet”.

2.1.4 **Section 907.2.10.6 Smoke Alarms – Power Source**

Add to the end of the paragraph the following:

Smoke and/or carbon monoxide alarms shall not be installed on a circuit dedicated only for smoke and/or carbon monoxide alarms.

2.1.5 **Section 915.2.1 Carbon monoxide alarms – Locations**

Revise “immediate vicinity” to read “within 15 feet”.

2.1.6 **Section 915.4.1 Carbon monoxide alarms – Power Source**

Add to the end of the paragraph the following:

Smoke and/or carbon monoxide alarms shall not be installed on a circuit dedicated only for smoke and/or carbon monoxide alarms.

2.1.7 **Section 1015.8 Window openings**

Replace the words “top of the sill” with “bottom of the clear opening”.

2.1.8 **Chapter 13**

Delete in its entirety.

2.1.9 **Section 1507.1.1 Ice barriers**

Add the following sentence at the beginning:

Due to a history of ice forming along the eaves in Colorado, an ice barrier is required.

And add the following language at the end of the first sentence:

...or not fewer than two layers of underlayment cemented together and to the roof.

2.1.10 **Section 1608.2 Ground snow loads**

Revise to read as follows:

Roof Snow Load (Pf) shall be in accordance with the local jurisdiction requirements and shall not be less than a minimum roof snow load of 30 PSF. The allowable increase of snow duration shall not be used when the snow load is above 65 PSF.

2.1.11 **Section 1609.3.1 Wind speed conversion**

Add this new section with the following language:

The 3 second gust basic wind speed shall be in accordance with the local jurisdiction requirements. For jurisdictions that have adopted a building code edition prior to the 2012, the basic wind speed of that jurisdiction shall be multiplied by 1.20 for Risk category I structures, 1.29 for Risk category II structures, and 1.38 for Risk category III and IV structures to obtain V*ult*. The design wind speed V*ult* shall not be less than the minimum basic wind speeds as follows (Risk category as determined by Table 1604.5):

Risk category I structures – 105 MPH

Risk category II structures – 115 MPH

Risk category III and IV structures – 120 MPH

The Exposure category shall be C, unless otherwise justified.

2.1.12 **Section 2111.1 and 2111.14.1 Fireplaces**

Add this new section with the following language:

Every new fireplace must comply with one of the following:

1. Listed and labeled fireplace and chimney systems composed of factory-made components, and assembled in the field in accordance with the manufacturer's instructions and the conditions of the listing, and

2. Approved gas logs.

2.2 The International Residential Code (IRC), 2018 Edition, published by the International Code Council, Inc. (ICC). This is a safety code and is available through the ICC at: https://www.iccsafe.org.

2.2.1 **Table R301.2 (1)** -

Revise as follows:

Climatic or Geographic Design Criteria for IRC Dwellings (Risk Category II Structures)	Division of Housing Minimum
Roof Snow load[(1)]	30 psf, non-reducible
Basic Wind Speed[(1)]	115 mph (V_{ult}), Exposure C
Wind Topographic Effects	Per Local
Seismic Design Category[(1)]	Minimum B
Weathering	Severe
Frost Line Depth[(4)]	Per Local
Termite Damage	Slight
Winter Design Temperature[(2)]	Per Local
Ice Barrier Underlayment Requirement	Yes
Flood Hazards	Per Local
Air Freezing Index[(3)]	Per Local
Mean Annual Temperature[(3)]	Per Local
Wildfire Risk	Per Local

[(1)]The roof snow load, wind design, and seismic zone shall be in accordance with the local jurisdiction requirements and shall not be less than the minimums stated. The allowable increase for snow duration shall not be used when the snow load is above 65 PSF.

[(2)]See Appendix B and verify with local jurisdiction.

[(3)]See the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32° Fahrenheit)" at www.ncdc.noaa.gov.

[(4)] In areas of the state without a local jurisdiction, the Division of Housing will approve all temporary or permanent foundation systems as defined in Rule 2.

2.2.2 **Table R301.5 – Live Loads**

Add footnote (j) to Decks, Porches, Exterior balconies, Fire escapes to read as follows:

[(j)]When the snow load is above 65 psf, the minimum uniformly distributed live loads for exterior balconies, decks and fire escapes shall be as required for roof snow loads.

2.2.3 **Table R302.1 (1) – Exterior Walls**

Delete footnote (b).

2.2.4 **Table R302.1 (2) – Exterior Walls—Dwellings with Fire Sprinklers**

Delete footnote (c).

2.2.5 **Section R308.4.6 Glazing adjacent to stairs and ramps**

Revise to include the following sentence as an exception:

1. Where the glazing is protected by a guard complying with Section R312 and the plane of the glass is more than 18 inches (457 mm) from the guard.

2.2.6 **Section R308.4.7 Glazing adjacent to the bottom of the stair landing**

Revise to increase to less than 60 inches (1524 mm) above the landing.

2.2.7 **Section R310.1 Emergency escape and rescue opening required**

Add a second sentence that reads as follows:

Cape Code style attics that qualify as a story shall require one operable emergency and escape opening.

2.2.8 **Section R310.2.2 Window sill height**

Replace the word “sill” with the word “opening” in the section title and replace the word “sill” with “window opening”.

2.2.9 **Section 311.7.12 Ships ladders**

Add the following sentence to the end of the Exception:

The device must remain fixed in position when used in these areas.

2.2.10 **Section R312.2.1 Window sill heights**

Replace the word “sill” with the word “opening” in the section title and delete the words “the sill of”.

2.2.11 **Section R313 Automatic Fire Sprinkler Systems**

Delete this section and replace it with the following:

An automatic fire sprinkler system shall be installed in one and two family dwellings and townhouses as required by the local jurisdiction where the home will be set. In-plant and final tests required by this Section shall be approved by a certified inspector. The inspector shall be an employee of the fire department having jurisdiction or another qualified individual with prior approval of the Colorado Division of Fire Prevention & Control.

2.2.12 **Section 314.3 (2) Smoke Alarms – Location**

Revise “immediate vicinity” to read “within 15 feet”.

2.2.13 Section 314.4 Revise "Physical interconnection of smoke alarms shall not be required where listed wireless alarms are installed and…" to "Physical interconnection of smoke alarms shall not be required where listed wireless alarms are installed in existing construction when approved by the Division of Housing and…"

2.2.14 **Section 314.6 Smoke Alarms – Power Source**

Add to the end of the paragraph the following:

Smoke and/or carbon monoxide alarms shall not be installed on a circuit dedicated only for smoke and/or carbon monoxide alarms.

2.2.15 **Section 315.3 Carbon monoxide alarms – Locations**

Revise "immediate vicinity" to read "within 15 feet".

2.2.16 **Section 315.6 Carbon monoxide alarms – Power Source**

Add to the end of the paragraph the following:

Smoke and/or carbon monoxide alarms shall not be installed on a circuit dedicated only for smoke and/or carbon monoxide alarms.

2.2.17 **Section R802.10 Wood trusses**

Add the following new section:

Section R802.10.5 Marking

Each truss shall be legibly branded, marked, or shall have other permanent labeling of the truss drawing's designated identification number on the large face of the top chord and within two (2) feet of the peak of the truss.

2.2.18 **Section R905.1.2 Ice barriers**

Revise to read as follows:

Due to a history of ice forming along eaves in Colorado, an ice barrier is required. The ice barrier shall consist of a self-adhering polymer-modified bitumen sheet and shall extend from the eave's edge to a point at least 24" inside the exterior wall line of the building or of not fewer than two layers of underlayment cemented together and to the roof.

2.2.19 **Section R1004.4, G2406.2 exceptions 3 and 4, G2425.8 #7, G2445**

Delete all and replace with the following:

Unvented fuel fired room heaters and unvented fuel fired fireplaces are prohibited.

2.2.20 Add the following new sections:

Section R1001.1and R1004.1 – Fireplaces

Every new fireplace must comply with one of the following:

1. Listed and labeled fireplace and chimney systems composed of factory-made components, and assembled in the field in accordance with manufacturer's instructions and the conditions of the listing, and

2. Approved gas logs.

2.2.21 **Section P2503.5.1 Rough plumbing**

Delete the words "other than plastic" in the sentence for water and air testing.

2.2.22 **Chapter 11 ENERGY EFFICIENCY**

Delete in its entirety.

2.2.23 **Section M2001.1 Installation and G2452.2 Installation**

Add the following sentence:

All rooms or spaces containing boilers shall be provided with a floor drain and trap primer.

2.2.24 **Section G2417.4.1 Test pressure**

Revise to read as follows:

The test pressure to be used shall not be less than 1 ½ times the proposed maximum working pressure, but not less than 10 psig (69 kPa gauge) for a period of not less than 15 minutes. Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe. The test pressure for valves and connections to appliances shall not exceed 0.5 psig (3kPa).

2.2.25 **Electrical Sections**

Delete Chapters 34 through 43.

2.2.26 **Appendix A – Sizing and Capacities of Gas Piping**

Adopted.

2.2.27 **Appendix P – Sizing of Water Piping System**

Adopted.

2.2.28 **Appendix Q – Tiny Houses**

1. Amend Appendix Q Tiny Houses as follows:

   a. Q101.1 Scope: Change to read: This appendix shall be applicable to tiny houses, and "tiny homes" as defined by section 24-32-3302(35), C.R.S., used as single dwelling units. Tiny houses, and "tiny homes" as defined by section 24-32-3302(35), C.R.S., shall comply with this code except as otherwise stated in this appendix. Insert "…and tiny homes" after each reference to "tiny houses" in all sections of this appendix.

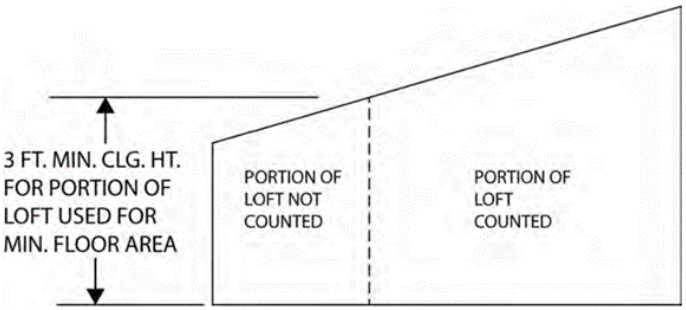
b. Q102.1 General: Add TINY HOME: as defined by section 24-32-3302(35), C.R.S. The square footage of a tiny home excludes loft area.

c. Edit Q104.2 to read: Loft Access and egress. The access to and primary egress from lofts shall be of any type described in Sections Q104.2.1 through Q104.2.5. The loft access and egress element along its required minimum width shall meet the loft where its ceiling height is not less than 3 feet (914 mm). Egress from the sleeping loft must be present and may be reached from the loft or the loft landing.

d. Edit Q104.2.1. to read: Stairways. Stairways accessing lofts shall comply with this code or with Sections Q104.2.1.1 through Q104.2.1.7.

e. Edit Q104.2.2 to read: Headroom. The headroom above stairways accessing a loft shall be not less than 6 feet 2 inches (1880 mm), as measured vertically, from a sloped line connecting the tread, landing or landing platform nosings in the center of their width and vertically from the landing platform along the center of its width.

f. Edit Q10 4.1.3: Add See Figure Q104.1.3:



For SI: 1 foot = 304.8 mm.

FIGURE AQ104.1.3
HEIGHT EFFECT ON LOFT AREA

g. Edit Q104.2.1.4 to read: Landings. Intermediate landings and landings at the bottom of stairways shall comply with Section R311.7.6, except that the depth in the direction of travel shall be not less than 24 inches (610 mm).

h. Add Q104.2.1.5: Landing platforms. The top tread and riser of stairways accessing lofts shall be constructed as a landing platform where the loft ceiling height is less than 6 feet 2 inches (1880 mm) where the stairway meets the loft. The landing platform shall be not less than 20 inches (508 mm) in width and in depth measured horizontally from and perpendicular to the nosing of the landing platform. The landing platform riser height to the loft floor shall be not less than 16 inches (406 mm) and not greater than 26 inches (660 mm).

i. Renumber Q104.2.1.5 Handrails to Q104.2.1.6 Handrails.

j. Renumber Q104.2.1.6 Stairway guards to Q104.2.1.7 Stairway guards.

k. Edit Q104.2.2.1 Size and capacity from "…supporting a 200-pound (75kg) load…" to "…supporting a 300-pound (136kg) load…".

l. Edit Q104.2.5 to read: Loft guards. Loft guards shall be located along the open sides of lofts. Loft guards shall be not less than 36 inches (914 mm) in height or one-half of the clear height to the ceiling, whichever is less. Loft guards shall comply with Section R312.1.3 and Table R301.5 for their components.

m. Add: Q106: SECTION Q106

ENERGY CONSERVATION

Q106.1 Air leakage testing. The air leakage rate for shall not exceed 0.30 cubic feet per minute at 50 Pascals of pressure per square foot of the dwelling unit enclosure area. The air leakage testing shall be in accordance with the testing methods required in IECC 2015 R402.4.1.2. The dwelling unit enclosure area shall be the sum of the areas of ceilings, floors and walls that separate the conditioned space of a dwelling unit from the exterior, its adjacent unconditioned spaces and adjacent dwelling units.

Q106.1.1 Whole-house mechanical ventilation. Where the air leakage rate is in accordance with Section Q106.1, the tiny house shall be provided with whole house mechanical ventilation in accordance with Section M1505.4.

Q106.2 Alternative compliance. Tiny houses and tiny homes shall be deemed to be in compliance with Chapter R4 of the adopted International Energy Conservation Code, provided that the following conditions are met:

1. The insulation and fenestration meet the requirements of IECC 2015 Table R402.1.2 as amended by these rules (allowing ceiling insulation to be R30 vs. R49).

2. The thermal envelope meets the requirements of IECC 2015 Section R402 and IECC 2015 Table R402.4.1.1.

3. Solar, wind or other renewable energy source supplies not less than 90 percent of the energy use for the structure.

4. Solar, wind or other renewable energy source supplies not less than 90 percent of the energy for service water heating.

5. Permanently installed lighting is in accordance with IECC 2015 Section R404.

6. Mechanical ventilation is provided in accordance with IRC 2018 Section M1505 and operable fenestration is not used to meet ventilation requirements.

n. Add: Q107: Bathroom Lavatory, For Tiny Homes, if a bathroom lavatory cannot be added due to size constraints, then the kitchen sink can be substituted to meet the lavatory requirement.

o. Add: Q108: Construction on a Built-for-Purpose Trailer. The tiny home will be built on a built-for-purpose trailer. Trailers that have structure modifications prior to the start of the tiny home build must provide engineered stamped drawings and the documentation to be roadworthy on Colorado roads. (Structural modifications may change the trailer classification to a kit trailer or homemade trailer and a new VIN/GVWR and physical

inspection by CDOT or Colorado State Highway Patrol, or other approved agencies may be required.)

p. Add: Q109: Tiny Home on a Temporary Foundation. A tiny home on wheels which is installed on a temporary foundation may utilize connections to an electrical pedestal or plumbing connections that allow for movement from one location to another.

2.3 The International Mechanical Code (IMC), 2018 Edition, published by the International Code Council, Inc. (ICC). This is a safety code and is available through the ICC at: https://www.iccsafe.org.

2.3.1 **Section 303.3.1 LPG appliance**

Add the following new section:

LPG appliances shall not be installed in a pit, basement, or crawl space where unburned fuel may accumulate unless an approved sensing device is installed in conjunction with an automatic shutoff valve located where the gas enters the structure only for retro-fitting of existing structures or as required by the local jurisdiction.

2.3.2 **Section 903.1 General**

Add the following additional sentence:

Every new installation of a solid fuel-burning, vented decorative appliance or room heater shall meet the most stringent emission standards for wood stoves established under State statute and/or regulations promulgated by the State Air Quality Control Commission as of the time of installation of the appliance or room heater. (Effective January 1, 1991 – CC90-617).

2.3.3 **Section 903.3 Unvented gas log heaters**

Delete this section in its entirety.

2.4 The International Plumbing Code (IPC), 2018 Edition, published by the International Code Council, Inc. (ICC). This is a safety code and is available through the ICC at: https://www.iccsafe.org.

2.4.1 **Appendix Chapter E – Sizing of water piping systems**

2.4.1.1 **Section 312.3**

Delete the words “Plastic Piping shall not be tested by using air”.

2.5 The National Electric Code (NEC), published by the National Fire Protection Association, Inc. (NFPA), and the Edition as adopted by the Colorado State Electrical Board at the time of plan submittal. This is a safety code and is available through the NFPA at: https://www.nfpa.org.

A transition period of 180 days after the effective date applies. The Program Manager for the Building Codes and Standards Section is authorized to grant, in writing, one extension, for a period not more than 180 days.

Any conflicts that may arise between these amendments and a future State adopted edition of the NEC shall be resolved by applying the specific amended provisions of the 2020 edition. The following amendments are made to the NEC for use with all factory-built units:

2.5.1 **Article 545 Manufactured Buildings**

Add the following new section:

2.5.1.1 **Section 545.14 Testing**

(A) Continuity and Operational Tests and Polarity Checks. Each manufactured building shall be subjected to:

(1) An electrical continuity test to ensure that all exposed electrically conductive parts are properly bonded;

(2) An electrical operational test to demonstrate that all equipment, except water heaters and electric furnaces, is connected and in working order; and

(3) Electrical polarity checks of permanently wired equipment and receptacle outlets to determine that connections have been properly made.

These tests shall be performed after branch circuits are complete and after wiring devices are installed and wiring properly terminated.

2.5.2 **Article 334.23 Cables Run Across the Top of Floor Joists/Rafters**

Add the following new sentence at the end:

Substantial guard strips or other protection shall be provided to protect wiring within three (3) feet of the marriage line where the attic is exposed and the roof is completed on-site, such as a hinged roof.

2.5.3 Article 210.8(F) Outdoor Outlets

Add the following to the existing exception:

…than those covered in 210.8(C), and outlets designated for outdoor mechanical cooling equipment.

This exception is limited to outdoor mechanical cooling equipment shipped loose by the manufacturer with the factory-built structure to be completed on-site. This exemption does not apply if the outdoor mechanical cooling equipment is provided by any other party. If it is provided by a party that is not the manufacturer of the factory-built structure, then the State Electrical Board's requirement applies.

2.6 The International Fuel Gas Code (IFGC), 2018 Edition, published by the International Code Council, Inc. (ICC). This is a safety code and is available through the ICC at: https://www.iccsafe.org.

2.6.1 **Section 303.3 Prohibited locations**

Add the following:

LPG appliances shall not be installed in a pit, basement, or crawl space where unburned fuel may accumulate unless an approved sensing device is installed in conjunction with

an automatic shutoff valve located where the gas enters the structure only for retro-fitting of existing structures or as required by the local jurisdiction.

2.6.2 **Section 303.3, 501.8 #8, Section 621**

Delete all and replace with the following:

Unvented fuel fired room heaters and unvented fuel fired fireplaces are prohibited.

2.6.3 Section 406.4.1 Test pressure

Revise to read as follows:

The test pressure to be used shall not be less than 1 ½ times the proposed maximum working pressure, but not less than 10 psig (69 kPa gauge), irrespective of design pressure. Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe. The test pressure for valves and connections to appliances shall not exceed 0.5 psig (3kPa).

2.7 The International Energy Conservation Code (IECC), 2015 Edition, published by the International Code Council, Inc. (ICC). This code is available through the ICC at: https://www.iccsafe.org.

2.7.1 **Section C101.5 and R101.5 Compliance**

Residential buildings shall meet the provisions of the 2015 IECC—Residential provisions.

Commercial buildings shall meet the provisions of the 2015 IECC—Commercial provisions.

Add the following exception:

Where the location the factory-built structure is to be permanently set is known and the local jurisdiction has adopted the 2012 IECC, the building may comply with the 2012 IECC. Where the location of the factory-built structure is to be permanently set is known and the local jurisdiction has adopted an earlier version of the energy code which is less restrictive than the 2012 IECC, including any local jurisdiction amendments, or where no code has been adopted that regulates the design of buildings for effective energy use, the structure may comply as far back as the 2009 IECC.

2.7.2 **Section C202, R202 - Definitions**

Add the following definition:

ZERO-ENERGY BUILDING. A building with zero net energy consumption and zero carbon emissions annually as certified by an approved annual energy use analysis.

2.7.3 **Section C402.1.1 Low energy buildings**

Add the following exemption:

4. **Zero-Energy Buildings.** Zero energy buildings are exempt from the provisions of the International Energy Conservation Code.

2.7.4 **Section C402.1.2**

Add the following exemption:

Equipment buildings intended to house temperature sensitive equipment, not intended for human occupancy, and not exceeding 1000 sq. ft. will be exempt from the building thermal envelope provisions of this code.

2.7.5 **Section C404.5**

Delete this section in its entirety.

2.7.6 **Section R402.1 Low energy buildings**

Add the following exemption:

1. Zero-Energy Buildings. Zero energy buildings are exempt from the provisions of the International Energy Conservation Code.

2.7.7 **Section R402.4.2.1**

Revise to add the following exception:

All air barrier elements shall be installed as detailed in Table 402.4.1.1. and are inspected and verified with a checklist incorporated into the Quality Assurance Inspection Checklist and part of the "finished home" file for the building/dwelling. All elements of the air barrier shall be listed and installed per the manufacturer's installation instructions. A completed air barrier checklist shall be kept on file with the Division of Housing and the manufacturer's quality assurance program.

If not complying with the first paragraph, an air leakage test shall not exceed 5 air changes per hour in all climate zones and shall comply with one of the compliance methods in R401.2.

Construction Standards and Procedures for U.S. Housing and Urban Development (HUD) Homes

These standards and procedures are available through HUD at: https://www.hud.gov.

Pursuant to sections 24-32-3302(12), 24-32-3302(13), 24-32-3302(20), 24-32-3302(32), 24-32-3305(5), 24-32-3306(1), 24-32-3307(2), 24-32-3309(1)(a), and 24-32-3327, C.R.S., the State Housing Board adopts the following requirements for manufactured homes constructed to the "National Manufacturing Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq. (manufactured from June 15, 1976 to present):

2.8 Compliance with Title 24: Housing and Urban Development; Subtitle B—Regulations Relating to Housing and Urban Development (Continued); Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development; Part 3280—Manufactured Home Construction and Safety Standards, of Title 24.

2.9 Compliance with Part 3282—Manufactured Home Procedural and Enforcement Regulations of the same title, subtitle, and chapter in Rule 2.8 above as applied and enforced as the state administrative agency for the federal government.

2.10 Compliance with Part 3286—Manufactured Home Installation Program of the same title, subtitle, and chapter in in Rule 2.8 above, which is inspected and enforced through application of the Division of Housing's adopted Manufactured Housing Installation Codes.

2.11 Compliance with Part 3288—Manufactured Home Dispute Resolution Program of the same title, subtitle, and chapter in Rule 2.8 above as applied and enforced as the state administrative agency for the federal government.

Manufactured Home and Tiny Home Installation Standards

These standards and guidelines are available through the Division of Housing in the form of the "Manufactured Home and Tiny Home Installation Handbook" located at: https://www.colorado.gov/dola/division-housing.

2.12 Pursuant to section 24-32-3310, C.R.S., nothing in this rule is intended to interfere with the right of a local jurisdiction to enforce its rules governing the installation of a manufactured home or tiny home as long as those rules are not inconsistent with this rule. Pursuant to section 24-32-3318, C.R.S., a local jurisdiction may not adopt less stringent standards for the installation of a manufactured home or tiny home than those adopted by the Division and may not adopt a different standard without express consent by the Division. However, a local jurisdiction may adopt unique public safety requirements related to geographic or climatic conditions such as weight restrictions for snow loads or wind shear factors subject to the conditions outlined in section 24-32-3318, C.R.S.

2.12.1 Factory-built residential structures (modular) must be installed on a permanent foundation approved through the local jurisdiction. In areas where no building codes have been adopted, the foundation must be designed and approved by a State of Colorado licensed engineer unless plans are approved by the Division and in compliance with its adopted International Residential Code (IRC) foundation prescriptive requirements.

2.13 Primary Standards (required for all new homes):

2.13.1 The current written installation instructions provided by the manufacturer of the home.

2.13.1.1 An installation of a HUD-code home in this state must be performed in strict accordance with the applicable manufacturer's installation instructions. The value of the allowable bearing capacity of the soil the home will rest on must be recorded by the installer on the Installation Authorization form or other Division-approved form and justification for higher values also provided if it is determined to be other than 1,500 psf.

2.14 Alternate Standards (for older homes or homes that do not include the manufacturer's installation instructions) – installation must be in accordance with the following alternate standards adopted by the Division and State Housing Board:

2.14.1 Modular Homes and Tiny Homes

2.14.1.1 Structural attachment requirements approved by a State of Colorado actively licensed engineer.

2.14.1.2 Current version of the International Residential Code (IRC) as adopted by the State Housing Board.

2.14.2 Mobile and HUD-code Homes

2.14.2.1 National Fire Protection Association (NFPA) 225, Model Manufactured Home Installation Standard 2013 Edition, including any revisions, additions, and deletions identified below.

2.14.2.1.1 **Section 4.4.4 Site suitability with home design**

Revise to read as follows:

The installer shall verify data plates provided with a HUD-code home prior to installation in the state of Colorado. The data plate shall be matched with the home (serial numbers). The data plate shall indicate the following minimums:

Wind Zone: I

Thermal Zone: III

Roof Load: Middle (30 PSF)

If the data plate does not meet these minimum requirements, the installer shall not set the home. The installer is required to check with the local jurisdiction where the home will be located to determine if it is designed for the area's proven snow or wind load since some parts of the state are subjected to heavy snow and/or high winds.

2.14.2.1.2 **Section 5.3 Fire separation distance**

Revise to read as follows:

Fire separation distances shall comply with local rules or regulations. In their absence, the most current version of the International Residential Code (IRC) as adopted by the Housing Board applies.

2.14.2.1.3 **Section 5.5.2**

Revise to read as follows:

Soil that supports footings and foundations shall be capable of accommodating all loads required by this standard. To help prevent settling or sagging, the foundation must be constructed on firm, undisturbed soil or 90% compacted soil. The design bearing capacity of the soil shall be determined in accordance with Section 5.6.

2.14.2.1.4 **Section 5.6 Investigation and Bearing Capacity of Soil**

Revise as follows:

Soils that appear to be composed of peat, organic clays, uncompacted fill, expansive or other unusual conditions shall have a licensed engineer determine the classification and maximum allowable soil bearing capacity.

Otherwise the bearing capacity of the soil shall be assumed to be 1,500 psf.

A larger bearing capacity for the soil may be used as follows provided the class of soil is known:

Sandy gravel and/or gravel, very dense or cemented sands (GW, GP, SW, SP, GM, SM) ---------- 2,000 psf

Sedimentary and foliated rock---------- 4,000 psf

When a value other than 1,500 psf is determined for the soil bearing capacity it shall be recorded by the installer on the Division of Housing's Installation Authorization form and justification for higher values shall also be provided.

2.14.2.1.5 **Section 5.8.1 Vapor retarder**

Revise as follows:

If the space under the home is to be enclosed with skirting or other material, a vapor retarder that keeps ground moisture out of the home shall be installed unless specifically allowed to be omitted by the authority having jurisdiction.

2.14.2.1.6 **Section 5.8.3.2**

Revise as follows:

The vapor retarder may be placed directly beneath footings, or otherwise installed around or over footings placed at grade, and around anchors or other obstructions. Any voids or tears in the vapor retarder must be repaired.

2.14.2.1.7 **Section 6.2.3.1.2**

Delete this section.

2.14.2.1.8 **Section 6.2.3.1.3.1**

Revise as follows:

Tables 6.2.3.1.3(a), 6.2.3.1.3(b), and 6.2.3.1.3(c) for pier capacities, as replaced in Appendix A, shall be used

when the manufacturer's installation instructions are not available.

2.14.2.1.9 **Section 6.2.3.1.3.2**

Revise as follows:

Manufactured piers shall be rated at least to the capacities given in Tables 6.2.3.1.3(a), 6.2.3.1.3(b), and 6.2.3.1.3(c), as replaced in Appendix A, and locally constructed piers shall be designed to transmit these loads safely as required by 6.2.3.2.

2.14.2.1.10 **Section 6.2.3.2.2.2**

Revise as follows:

Caps shall be of solid masonry of at least 4 in. (100 mm) nominal thickness, or of treated or hardwood dimensional lumber at least 2 in. (50mm) nominal thickness, or of ½" thick steel.

2.14.2.1.11 **Section 6.2.3.2.3.1**

Revise as follows:

Nominal 4 in. x 6in. (100mmx 150mm) hardwood shims shall be used to level the home and fill any gaps between the base of the I-beam and the top of the pier cap. Any of the following hardwood species may be used: Ash, Beech, Birch, Hickory, Oak, Rock Elm, Black or Red Maple, or Sweetgum.

2.14.2.1.12 **Section 6.2.3.2.3.3**

Revise as follows:

Hardwood (species identified in the amendment to Section 6.2.3.2.3.1 above) or treated wood plates shall be used to fill in any remaining vertical gap no thicker than 2". The maximum total gap to be filled with shims and plates shall be 2".

2.14.2.1.13 **Section 6.2.5.5**

Revise as follows:

All homes. Supports shall be placed on both sides of side wall exterior doors and any other side wall openings greater than 48 in. (such as entry and sliding glass doors), and under porch posts, factory installed fireplaces and wood stoves. Size perimeter piers under openings based on Table 6.2.3.1.3(b), as replaced in Appendix A, "Exterior wall" where the actual side wall

opening shall be less than or equal to the spacing selected from the table.

Homes requiring perimeter blocking. Refer to Figure 6.2.5.3 and Figure 6.2.5.4 and Table 6.2.3.1.3(b), as replaced in Appendix A, for homes requiring perimeter blocking in addition to sidewall opening blocking described above.

2.14.2.1.14 **Section 6.3.1.2.2**

Delete this section.

2.14.2.1.15 **Section 6.5.2**

Delete this section.

2.14.2.1.16 **Section 7.2**

Revise as follows:

The home shall be installed and leveled by installation personnel approved by the State of Colorado to install manufactured homes.

2.14.2.1.17 **Section 7.3**

Revise as follows:

The interconnection of multi-section homes shall be completed in accordance with the manufacturer's installation instructions. When the manufacturer's installation instructions are not available, the interconnection of multi-section homes shall be in accordance with Table 7.3, as provided in Appendix A, or per the requirements approved by a State of Colorado licensed engineer.

2.14.2.1.18 **Section 7.5 Anchoring Instructions**

Section 7.5.1 Security against the wind

Section 7.5.1.1

Revise as follows:

After blocking and leveling, the installer shall secure the manufactured home against wind per Section 7.5.2 or Section 7.5.3. Anchorage shall be for Wind Zone I. Homes that are designed for Wind Zone II and III must be anchored per the Manufacturer's Installation Instructions or the requirements of a professional engineer.

2.14.2.1.19 **Section 7.5.2 Proprietary Anchorage Systems**

Add the following:

A proprietary anchorage system may be used to resist overturning and lateral movement (sliding) caused by wind as long as it complies with all of the following:

1. The system shall be listed by a nationally recognized third-party agency for anchoring manufactured homes.

2. The system shall be evaluated and approved by a licensed professional engineer.

3. The system shall be recognized as acceptable for use by the Division of Housing.

4. The installer shall follow the requirements in the anchorage system installation instructions.

2.14.2.1.20 **Section 7.5.3 Ground Anchor System**

Section 7.5.3.1 Specifications for Tie-Down Straps and Anchors

Add the following:

Straps and anchors are to have corrosion protection at least equivalent to that provided by a coating of zinc on steel of not less than 0.30 oz/ft^2 of surface coated. Straps and anchoring equipment must be capable of resisting a minimum ultimate load of 4,725 lbs and a working load of 3,150 lbs as installed; determined by a licensed professional engineer, architect or tested by a nationally recognized third-party agency. Straps are to be 1.25”x0.035” or larger steel strapping conforming to ASTM D 3953, Type 1, Grade 1, Finish B. Anchors are to be installed in accordance with their listing or certification to their full depth.

2.14.2.1.21 **Section 7.5.3.2 Number and Location of Anchors**

Section 7.5.3.2.1 Transverse Anchorage

Add the following:

The number and location of anchors and anchor straps for securing single-section and multi-section manufactured homes in the transverse direction shall conform to the manufacturer’s installation instructions. When relocating the home or when the manufacturer’s installation instructions are not available, the number and location of anchors and anchor straps shall conform to Table 7.5.3.2.1, Figure 7.5.3.2.1(a), and Figure 7.5.3.2.1(b), as provided in Appendix A.

2.14.2.1.22 **Section 7.5.3.2.2 Longitudinal Anchorage**

Add the following:

The number and location of anchors and anchor straps for securing single-section and multi-section manufactured homes in the longitudinal direction shall conform to the manufacturer's installation instructions. When relocating the home or when the manufacturer's installation instructions are not available, the number and location of longitudinal anchors and anchor straps shall conform to Table 7.5.3.2.2 and Figure 7.5.3.2.1(a), as provided in Appendix A.

2.14.2.1.23 **Section 7.5.3.2.3 Anchor Installation**

Add the following:

The installed ground anchor type and size/length must be listed for use in the soil class at the site and for the minimum and maximum angle permitted between the diagonal strap and the ground and all ground anchors must be installed in accordance with their listing or certification and the ground anchor manufacturer installation instructions. Unless the foundation system is frost-protected to prevent the effects of frost heave, the ground anchors shall be installed below the frost line. Ground anchor stabilizer plates shall be installed in accordance with the anchor and plate manufacturer installation instructions.

2.14.2.1.24 **Section 7.5.3.2.4 Side wall or over the roof straps**

Add the following:

If sidewall, over-the-roof, mate-line, or shear wall straps are installed on the home, they must be connected to an anchoring assembly.

2.14.2.1.25 **Section 7.6.3 Expanding Rooms**

Revise as follows:

Expanding rooms shall be installed in accordance with the manufacturer's instructions. When the manufacturer's instructions are not available, perimeter blocking shall be installed in accordance with Table 6.2.3.1.3(b), as replaced in Appendix A, and anchors shall be installed in accordance with Section 7.5.3.2.

2.14.2.1.26 **Section 7.7.4.2**

Revise (2) as follows:

(2) Walls-200.

2.14.2.1.27 **Section 8.1 Installation of Site-Installed Features**

Revise as follows:

Carports, awnings, porches, roof covers, and other similar attachments or additions shall not be supported by a manufactured home unless the home was specifically designed to accommodate such attachments or the attachment is designed by a licensed professional engineer. Non-structural connections for flashings and coverings at the junction are acceptable.

2.14.2.1.28 **Section 8.4**

Delete this section.

2.14.2.1.29 **Section 8.8.3**

Revise as follows:

Access opening(s) not less than 18 inches in width and 24 inches in height must be provided and located so that any utility connections are accessible.

2.14.2.1.30 **Section 8.9 Telephone and Cable TV**

Revise as follows:

Telephone, cable TV, and similar wiring shall be installed per the Authority Having Jurisdiction (AHJ) requirements and the National Electric Code (NEC).

2.14.2.1.31 **Section 9.4 Range, Cooktop, Oven Venting, and other Fixtures or Appliances**

Add new Section 9.4.3 to read as follows:

If other fixtures or appliances are to be site-installed, follow the manufacturer's installation instructions. Use only products listed for manufactured homes and follow all applicable local codes.

2.14.2.1.32 **Section 9.7 Furnace, Water Heater, and other Fuel Fired Appliances**

Add this new section to read as follows:

Verify appliance is installed per the manufacturer's installation instructions including any combustion air requirements. Verify flues are in place and are properly connected and extend through the roof with flashing and caps.

2.14.2.1.33 **Section 10.4.2 Orifices and Regulations**

Revise as follows:

Before making any connection to the site supply, the inlet orifices of all gas-burning appliances shall be checked to ensure they are correctly set-up for the type of gas to be supplied and are sized correctly for the altitude above sea level where the home is set. The manufacturer's installation instructions for the appliance shall be followed.

2.14.2.1.34 Chapter 11 Life Safety Features

Revise as follows:

2.14.2.1.34.1 **Smoke Alarms**

Verify smoke alarms are installed to protect the living area, rooms designed for sleeping, on upper levels, and in the basement for homes installed over a basement. Verify smoke alarms are installed and operating properly to meet the requirements of 24 CFR 3280.

2.14.2.1.34.2 **Carbon Monoxide Alarms**

An approved carbon monoxide alarm shall be installed outside of each separate sleeping area within 15 feet of the entrance to the bedrooms in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages.

2.14.2.1.34.3 **Fire Separation Distance**

Fire separation distances shall comply with local rules or regulations. In their absence, the most current version of the International Residential Code (IRC) as adopted by the State Housing Board, shall apply.

2.14.2. 2 Permanent Foundations Guide for Manufactured Housing (4930.3G), , published by the U.S. Department of Housing and Urban Development (HUD), including any revisions, additions, and deletions identified below, or the most recent version.

2.14.2.2.1 Appendix B – Foundation Design Load Tables

Revised as follows:

In the multi-section tables under the marriage wall opening width (ft.), the values given for required effective footings area – Aftg (sq.ft.), shall be divided by 2.

2.15 Upon written request, the Division of Housing will consider modifications to the standards or alternate materials and methods of construction. The Division of Housing will require that sufficient evidence or proof be submitted to support and substantiate the modification or alternate request.

2.15.1 The Division of Housing may approve any such modification or alternate, provided the Division of Housing finds that the proposed modification or alternate conforms with the intent and purpose of the standards and is equivalent in suitability, strength, effectiveness, durability, safety, and sanitation.

2.15.2 The approval of any modification and/or alternate by the Division of Housing will be made in writing and is required prior to commencing the work in question.

2.15.3 In the event that a local jurisdiction or the State has declared a state of emergency, the Division of Housing (DOH) may, upon written request from the local jurisdiction, allow an alternative method of design for the construction of the unit to comply with local provision as adopted by the local jurisdiction. This modification would allow a less stringent design by a local jurisdiction that has site specific information to allow such construction, and is approved to that specific jurisdiction. The modification should not require a more stringent requirement than what is already approved by the DOH. An approved DOH insignia will be adhered to the structure at final approval. These units will be viewed as site specific in nature and may require going back to the factory for modification before being sold or moved to another jurisdiction. These units will be owned by the local jurisdiction requesting the units, a designated housing authority, or designated nonprofit entity.

Rule 3. Fees.

Pursuant to sections 24-32-3309(1)(a), 24-32-3315(5), and 24-32-3323(3), C.R.S., the State Housing Board establishes the following schedule of fees, which are not subject to refund, are due in advance, and must accompany the appropriate application, except for certain inspection fees:

3.1	Annual registration fees:		
	3.1.1	Plant/Manufacturer:	$600.00
		3.1.1.1 Plant/Manufacturer Three Year	$1,800.00
	3.1.2	Inspection Agency:	$250.00
	3.1.3	Seller:	$200.00
	3.1.4	Installer:	$150.00
	3.1.5	Independent Inspector:	$450.00
	3.1.6	Late re-registration fee	$100.00
3.2	Plan checking fees:		
	3.2.1	Finished space:	$0.25 per sq. ft. ($160 min.)
	3.2.2	Unfinished space (attics, lofts, garages, etc.):	$0.10 per sq. ft.
3.3	Supplemental plan check fee (revisions, etc.):		$0.10 per sq. ft. ($50 min.)

	3.3.1	2nd Revision Plan Check Fee	$100.00
3.4	Third party oversight plan check fee:		$0.15 per sq. ft. ($100 min.)
3.5	Insignia fees:		
	3.5.1	Primary Insignia:	$125.00
	3.5.2	Additional Floor Tag:	$125.00
	3.5.3	Inspection-only Tag:	$125.00
	3.5.4	Component-only Insignia:	$125.00
	3.5.5	Modification Insignia:	$125.00
	3.5.6	Installation Insignia (free for participating jurisdictions):	$60.00
3.6	Inspection fees:		
	3.6.1	Plant/Factory certification inspection fee:	$350.00 per inspection
	3.6.2	Oversight inspection fee, including re-inspections:	$270.00 per inspection/address
		(A) An additional Multi-Box fee is required if the unit has more than 3 boxes – add $25.00 per box, up to a maximum of $1,875.00.	
		(B) Multi-family IBC Inspection Fee	$270 per inspection address plus an addition multi-box fee is required if the unit has more than 3 boxes – add $25 per box. An all-day (up to 8 hours) fee may be determined if necessary. Multi-day fees will require extra fees for lodging/food.
	3.6.3	Special inspection fee:	
		(A) In-State: $50.00 per hour, per inspection, plus trip expenses of travel, food, lodging, parking, car-rental, etc., as allowed in state fiscal rules for per diem and travel.	
		(B) Out-of-State units manufactured in Colorado:	$350.00 per inspection/unit
	3.6.4	Modification inspection fee:	$175.00
	3.6.5	Installation inspection fee:	
		(A) Rough or Final or Foundation:	$200.00
		(B) Re-inspection fee:	$200.00
		(C) Multi-family Installation Fee	$270 per inspection address plus an addition multi-box fee is

required if the unit has more than 3 boxes – add $25 per box. An all-day (up to 8 hours) fee may be determined if necessary. Multi-day fees will require extra fees for lodging/food.

(D) Cancelled Inspection fee – same day Full fee

3.6.6 Non Compliance/Prohibited Sale/Red Tag fee: $250.00

3.7 Certificate of Occupancy fee (only applies to hotels, motels, and multi-family structures in those areas of the state where no standards exist): $125.00

3.8 Waiver of fees:

3.8.1 Pursuant to section 24-32-3315(7)(a), the Division of Housing does not charge for certification of installers.

3.8.2 The Division of Housing waives the fee for certification of an independent inspector.

3.8.3 The Division of Housing does not charge for installer or inspector exams.

3.8.4 The Division of Housing waives the fee for certification of a plant/manufacturer.

3.8.5 The Division of Housing may waive fees for plan reviews and unit certifications that are subsidized under local, state, or federal housing programs for low-income households, and being constructed by the State of Colorado, a local government, or a nonprofit agency.

3.8.6 The Division of Housing waives the insignia fee for local jurisdictions that perform installation inspections as authorized participating jurisdictions.

Rule 4. Factory-Built Residential Structures (Modular and Tiny Homes) and Non-Residential Structures (Commercial) Requirements

4.1 Every “factory-built structure” as defined in section 24-32-3302(11), C.R.S., that is manufactured, sold, offered for sale, or occupied in this state must display an insignia issued by the Division of Housing certifying that the structure is constructed in compliance with the codes adopted by the State Housing Board. This does not apply to factory-built structures manufactured or sold for transportation to and installation in another state. However, if the unit were to return to Colorado for use, then it would require an insignia issued by the Division of Housing. To assist with the certification process, pursuant to section 24-32-3303(1)(a), C.R.S., a “manufacturer” as defined in section 24-32-3302(23), C.R.S., is required to be “registered” (based on qualifications) or “certified” (based on performance) with the Division of Housing.

4.1.1 Registration or certification is for a specific manufacturing facility location, and is not transferable to any other location including those of the same manufacturer.

4.1.2 A registered or certified manufacturer is required to inform the Division of Housing of a change in ownership, address, or location within ten (10) business days of such change.

4.2 Registered/Certified manufacturers are required to have that facility's production approved through an initial review of its Quality Control (QC) program and the Quality control personnel that ensure construction code compliance. The Division of Housing must be notified of any changes to the QC program or personnel.

4.3 The manufacturer's QC department must perform "no cover" inspections for all phases of construction on all structures and witness all required tests, regardless of whether the facility is registered or certified.

4.4 Upon the manufacturer's receipt of the approved plans and manual, the third party agency may schedule facility oversight inspections.

4.5 Manufacturers who sell direct to purchasers of one or two family dwellings must register as a Seller with the Division of Housing and follow all statutory and Administrative Rules requirements. See Rule 5.

4.5.1 The exception is if the purchaser is a developer who in turn plans to resell the home to the end-user; the developer in that scenario is required to be a registered seller with the Division of Housing.

4.5.2 Manufacturers who receive purchaser down payments from registered sellers or directly from intended home-owners, must provide the following protections for down payments in excess of the cost of materials, construction, design, and administration of the specific home ordered by the consumer:

(1) Provide to the Division of Housing a letter of credit or surety bond in the amount of $100,000 which the Division of Housing may call upon after an enforcement action for cancellation or failure to deliver a unit when the down payment is not returned.

(2) Make available to the Division of Housing upon request an accounting of deposits received, and amounts spent for materials, construction, design and administration for each unit from time of deposit received to delivery of the unit IF the Division requests this information as part of an audit to verify compliance.

4.6 In order to provide efficiency, manufacturers building multi-family or commercial units as a part of a development project of 5 or more units must contact the Division of Housing and provide a project plan that includes: project schedule, production schedule, on-site construction items, and installation plan and schedule. It is recommended to contact the Division of Housing early in the plan process, even before all the required documents are available. The Division will evaluate the materials provided, meet with the respective parties, and determine a total estimated fee schedule. Overnight stays by inspectors may require additional expenses.

Manufacturer Registration

4.7 Once issued by the Division of Housing's Building Codes & Standards Section, a registration is active for one (1) year or three (3) years after completing the first year and must be successfully renewed in order to continue manufacturing structures in the state of Colorado or shipping them into the state. Three year registrations will require an email or letter regarding any material changes (or no changes) to operations annually.

4.8 At the time of registration, all manufacturers are required to have Division of Housing approval, in writing, of the third party agency or agencies that will conduct the production inspections and certification of Colorado units on behalf of the Division of Housing. A manufacturer is also

required to request approval of the Division of Housing thirty (30) days prior to any subsequent change of its third party agency.

Certified Manufacturer Status

4.9 A manufacturer must maintain an active Colorado registration for each manufacturing facility requesting Certified status.

4.9.1 Out of state registered manufacturers must utilize a third party agency to submit a recommendation for certified manufacturer status to the Division of Housing.

4.9.2 In-state registered manufactures may utilize a third party agency to submit a certified manufacturer recommendation OR request certified manufacturer status from the Division of Housing.

4.9.3 Each manufacturing location will require a separate certified manufacturer recommendation.

4.9.4 The Division of Housing and authorized third party agencies will utilize the following criteria for approval of registered manufacturers requesting certified manufacturer status.

(A) Verify accountable personnel are capable of identifying and addressing non-conforming items.

(B) Verify that training has been achieved for all accountable personnel.

(C) Verify an established and functioning quality assurance program

(D) Verify that the last three units delivered to Colorado have completed production in compliance of (A), (B), and (C) above.

4.9.5 Manufactures who previously qualified for the Division of Housing's Certified Factory Status may continue with this status for one year, but are required to complete the new certified manufacturer status by July 1, 2024.

4.9.6 Recommendations received from a third party agency will be reviewed, and if deemed compliant, approved by the Division of Housing and a letter will be sent to the recommending agency, the certified manufacturer and the third party agency doing production inspections.

4.10 All certified manufacturers are registered manufacturers and must follow all registered manufacturer requirements unless specifically exempted or changed in these rules.

4.11 Certified manufacturer status for a specific facility is considered ongoing unless the manufacturer fails to perform as described in 4.12. An annual letter will be required from the manufacturer regarding any changes, or stating no changes, in the quality assurance program in order to continue certified manufacturer status.

4.12 The Division of Housing may immediately seek summary suspension to remove the designation of certified manufacturer status for failure to remedy any of the following conditions after notice from the Division of Housing:

4.12.1 The change of a third party agency or change in that entity's status.

4.12.2 The change of a facility location.

4.12.3 The manufacturer has had insignias of approval removed pursuant to Division of Housing procedures.

4.12.4 Failure to remedy manufacturing defects or deficiencies as identified by the Division of Housing and failure to provide a quality assurance program update on corrective actions taken to remedy identified defects or deficiencies.

4.12.5 Notification by a third party agency regarding failure to meet quality control guidelines.

4.12.6 The factory is not in compliance with "*Performance Criteria for Monitoring Manufacturers and Third Party Inspection Agencies*".

4.12.6.1 The "*Performance Criteria for Monitoring Manufacturers and Third Party Inspection Agencies*" utilizes a combination of qualitative analysis based on deficiencies identified during inspection, qualitative analysis based on systematic failures and recurring serious deficiencies,

4.13 A registered manufacturer whose status as a certified manufacturer has been removed by the Division of Housing will resume operations on a higher frequency of inspections until its performance improves and is recommended for reinstatement of its certified manufacturer status pursuant to Rule 4.9 of these rules.

Renewal

4.14 Each manufacturer is required to resubmit its quality control manual (and when applicable, plans) for approval prior to the registration expiration date that is stamped on the quality control manual. This Quality Control manual resubmission is required regardless of when plans are approved or structures shipped. Failure to comply with this requirement will result in that manufacturer's registered location having to comply with the initial registration inspection requirements.

4.14.1 The registration expiration date for all manufacturers is determined by the expiration date that is stamped on the quality control manual. Plans that are submitted at the time of registration or within the registration period shall have the same expiration date as the quality control manual.

4.14.2 It is the responsibility of the manufacturer to submit to the Division of Housing the quality control manual for approval within the authorized sixty (60) day renewal window prior to the expiration date.

Plan Review

4.15 All registered or certified manufacturers must obtain prior approval of each set of designs from the Division of Housing or third party agency before constructing structures under those plans.

4.15.1 The Division of Housing will expedite the review and approval of plans from registered or certified manufacturers whose plans have been reviewed and pre-approved by a third party agency who accepts responsibility and liability in ensuring compliance with requirements of these rules and applicable codes.

4.15.2 Life safety corrections will be sent back to the manufacturer and the third party agency that pre-approved the plans. Third party agencies who continue to pre-approve plans after notification of life safety plan corrections must provide a report on internal quality assurance corrective actions taken to the Division of Housing.

4.15.3 The Division of Housing and third party agencies will utilize redline comments for minor changes and corrections.

4.16 Plan approvals are granted to a manufacturer for a specific manufacturing facility and are not transferable to other manufacturing facilities including those of the same manufacturer.

4.17 Applications for plan review and approval must be submitted electronically to the Division of Housing and must be accompanied by the appropriate fees from Rule 3 of these rules.

4.17.1 The application must include the quality control manual; it must meet or exceed the minimum requirements as specified by the Division of Housing.

4.17.1.1 On-site Construction (OC) as defined in Rule 1.19 of these rules, must be clearly denoted on the submitted plans for determination of the model as an "OC)" structure. The manufacturer is required to follow the Division of Housing "On-site Construction Procedures" when the model is determined to be an OC. Determination of a model as an OC may happen during plan approval or after plan approval.

4.17.2 All applications must list an officer of the manufacturer that is in a responsible position with the authority to commit the manufacturer to comply with the rules and regulations that govern the regulation of its factory-built structures and tiny homes.

4.17.3 Factory-built structure and tiny home plans will meet any unique local government standards regarding wildfire risk.

4.17.4 Plans are approved only for a specific address unless the climatic and geographic design and wildfire risk conditions are equal to or less stringent than what was approved.

4.17.5 Multi-family plans submitted for review must include the applicable sections required by the Division of Housing plan review checklist. Included in that submittal, the plans must have a separate section that clearly describes the details for the installation of that building including but not limited to structural connection hardware and fasteners, sheer wall schedules, hold down schedules, plating and drag requirements and all connections that need to be inspected during the setting of the modular units, and must provide a separate manufacturer installation handbook that is clearly referenced on the cover sheet of the plan set, preferably where the building codes are referenced.

4.18 An application will expire and all fees forfeited if it is not completed within 120 days of the initial application date.

4.18.1 Expired applications must be resubmitted as new applications electronically with documentation and fees.

4.19 In order to be considered approved, plans and quality control manuals must be stamped by the Division of Housing or third party agency. Revisions, additions, or deletions will not be acceptable without prior approval.

4.19.1 An approved copy of the quality control manual and plan must be retained at the place of manufacture.

4.19.1.1 They must be kept on file within the specific location of manufacture for the purpose of construction and inspection by Division of Housing inspectors or the third party agency.

4.19.2 All third party agency approvals must be submitted to the Division of Housing for review and oversight approval.

4.20 Plan approval does not guarantee a manufactured structure constructed from the approved plan will also be approved. All structures must also undergo an inspection and receive an insignia of approval in order to be considered certified by the State of Colorado. A plan approval does not prevent the Division of Housing or the third party agency from requiring the correction of errors found in the plans or the unit itself, when found in violation of these rules.

4.21 Revisions to the approved plan are required where the manufacturer proposes a change in structural, plumbing, heating, electrical, or fire life safety systems. Such changes must become part of the approved plan unless the Division of Housing determines that the change constitutes a new model. If determined a new model, the interim change will be processed as a new application. Any difference in fees will also be assessed.

4.22 The Division of Housing will approve unchanged plan renewals it previously reviewed and approved, provided there has been no change in adopted codes and the manufacturer's officer in Rule 4.17.2 above certifies in writing that the plans are identical to those previously approved by the Division of Housing. A "Supplemental Plan Check Fee" will apply for plan renewals.

4.22.1 Should it be determined by the Division of Housing that unauthorized changes have been made to an approved plan, the manufacturer will be subject to a "Red Tag Fee" for every structure built to the changed plans, and the Division may require additional inspections to ensure the code compliance of the structures.

4.23 When amendments to these regulations require changes to be made to an approved plan, the Division of Housing will notify the manufacturer of the requirement and allow it a reasonable time to submit revised plans for review and approval. Revised plans will be processed as interim changes with the appropriate fees assessed.

4.24 Approved plans expire with the factory registration. Plans must be resubmitted and the Supplemental Plan Check Fee will apply. New plans approved within 120 days of the manufacturers' registration expiration date will not be required to resubmit plans for renewal until the next registration cycle. If the manufacturer fails to register on time, due to fault of their own, those plans are no longer valid and will be required to be renewed. The asset for that structure is required to have been created and construction started before the expiration to be exempt from the renewal process for that specific plan and structure.

4.25 Tiny home plans must include: details on the vehicle chassis, including drawings and connections, and whether the tiny home is going to be installed on a permanent or temporary foundation.

Inspections

4.26 All structures manufactured, sold, or offered for sale in the state of Colorado must display the Division of Housing insignia of approval affixed either by the Division of Housing, an authorized third party agency, or by a certified manufacturer. These insignias certify that the unit is constructed in compliance with applicable codes and regulations adopted by the State Housing Board. This does not apply to factory-built structures or tiny homes manufactured or sold for transportation to and installation in another state. However, if the unit were to return to Colorado for use, then it would require an insignia issued by the Division of Housing.

4.26.1 Registered (non-certified) and certified manufacturers must apply for Colorado insignias through the Division of Housing and submit the appropriate fees provided in Rule 3 of these rules.

4.26.1.1 For units that are completed at the manufacturing facility (are not OC units), insignias will be affixed to each structure only upon final inspection approval by the Division of Housing or an authorized third party agency

4.26.1.2 For units that have on-site construction items, insignias will be affixed to each structure after an OC inspection by the Division of Housing or a third party agency or a local building department that has agreed to accept responsibility for the inspection of the OC items.

4.26.1.3 Insignias affixed by an authorized third party agency or a certified manufacturer must be reported to the Division of Housing, including the insignia number, type of insignia of approval affixed (residential or commercial), manufacturer, serial number, date of manufacture of the structure, and the first destination of the shipped structure. A manufacturer is required to provide a copy of its monthly production report.

4.26.1.3.1 The Division of Housing may elect to not issue additional insignias of approval to a third party agency or certified manufacturer if all insignias affixed are not timely and completely reported.

4.27.2 Insignias are assigned for use at a specific location and cannot be transferable or used on an unapproved structure. Colorado insignias of approval issued for one type of certification may not be used on a structure of another (different) type. A silver 3”x5“ primary insignia (one or two family dwellings, except tiny homes) documenting manufacturer and design information is required for each structure to be installed in the state, or a blue 3”x5” primary insignia (commercial) documenting manufacturer and design information is required for each box to be installed in the state. A primary pink 3”x5” insignia will be required for each Tiny Home. A primary black 3x5 insignia will be attached to the primary box or Division of Housing approved location of each multi-family dwelling unit.

4.27.2.1 For residential only - each additional habitable floor section requires a silver 2”x2” “Additional Floor Tag” insignia7

4.27.2.2 For commercial only – an approved modification requires a green/silver 3”x5” “Modification” insignia.

4.27.2.3 For commercial only – components of a structure requires a purple 3”x5” “Component-only” insignia.

4.27.2.4 Both – factory-built structures inspected for another state requires a green 2”x2” “Inspection-only” insignia.

4.27.3 The primary insignia for residential and tiny homes must be permanently affixed inside the kitchen sink cabinet or inside the vanity cabinet if there is no kitchen sink. For certified manufacturers, this must occur prior to structures being removed from the production location that is certified. Additional Floor Tag insignias, if applicable, are to be permanently affixed and located directly under the primary insignia.

4.27.3.1 The primary insignia must contain the serial number, date of manufacture, wind design speed, roof design load, seismic zone, and construction codes.

4.27.4 Colorado insignias are the property of the State of Colorado and may be confiscated by the Division of Housing upon any violation of these rules. Defaced, marked in error, or voided insignias must be returned to the Division of Housing without refund.

4.27.5 Dates on insignia are completion dates.

4.27.6 For installation and inspection insignias, the name of the installer or inspector is required. Not the company name.

4.28 Whenever an on-site inspection reveals that a structure fails to comply with any provision of these rules, the Division of Housing or the third party agency may affix a "Red Tag Notice" on the structure. All manufacturers must correct any construction code violations within thirty (30) calendar days of inspection. Life safety corrections may require less than 30 days to correct. An extension may be granted when submitted in writing to the Division of Housing.

4.28.1 Once notified of a "Red Tag Notice" by the Division of Housing or the third party agency and the specific violation(s), the affected parties must resolve the issue(s) with the entity that posted the notice.

4.28.2 Within five (5) working days, the affected parties or their agents must notify, in writing, the Division of Housing or the third party agency of the action taken to correct the violation(s) and what steps have been taken by management to preclude the recurrence of the violation(s). Failure to respond within five (5) days may cause revocation of an affected party's status.

4.28.3 A structure posted with a "Red Tag Notice" cannot be sold, offered for sale, or have occupancy in the state of Colorado, nor can it be moved or caused to be moved without the prior written approval of the Division of Housing or the third party agency.

4.28.4 All structures posted with a "Red Tag Notice" must be corrected or removed from the state (with prior written approval of the Division of Housing or the third party agency). All structures that are corrected will be re-inspected to assure compliance with the codes and regulations, and a re-inspection fee will be assessed.

4.28.4.1 Multiple violations may result in the Division of Housing suspending plan reviews submitted by the manufacturer until all issues are addressed.

4.28.5 A "Red Tag Notice" may be removed only by an authorized representative of the Division of Housing or the third party inspection agency.

4.29 Factory-built structures may not be modified, prior to or during, installation at a site without approval from the Division of Housing. Once installed and its installation certified (factory-built residential structures only), any substantial alternation or repair made to the construction of the structure (both residential and nonresidential) already certified by the Division of Housing and on-site is under the jurisdiction of the local building department.

4.30 The Division of Housing and/or the third party agency retained by the manufacturer will conduct certification and production inspections of all manufacturers engaged in manufacturing or offering for sale factory-built structures in the state of Colorado. This inspection will include the quality control program and systems testing. This does not apply to factory-built structures manufactured or sold for transportation to and installation in another state. However, if the unit were to return to Colorado for use, then it would require an insignia issued by the Division of Housing.

4.30.1 Payment of the fees provided in Rule 3 is required if utilizing the services of an inspector from the Division of Housing. This cost is not refundable.

4.30.2 All in-state manufacturers shall have the option to contract with a third party agency or continue to use the Division of Housing to perform certifications and in-plant production inspections, to evaluate its registered/certified location's Quality Control procedures, approve manufacturer engineering manuals and installation instructions and/or approve construction plans.

4.30.3 Out of state manufacturers are required to obtain the services of a third party inspection agency to perform certifications and in-plant production inspections, to evaluate the plant's Quality Control procedures, and may use an approved third party agency to approve manufacturer engineering manuals, installation instructions, and/or approve construction plans.

4.30.3.1 Another state where a registered/certified manufacturer is located may act as a third party agency for certifications, in-plant production inspections and evaluations of their Quality Control procedures provided it enters into a memorandum of understanding with the Division of Housing and the manufacturer follows all requirements for that entity.

4.31 A third party agency may consist of one of the following entities (any exceptions must have prior approval by the Division of Housing):

(A) States – must enter into a memorandum of understanding with Colorado.

(B) Local Government – must adopt Division-approved local ordinance or rule.

(C) Firms – must currently be listed with a national listing agency such as the International Code Council (ICC), International Accreditation Service (IAS), or other Division-approved entity.

4.32 Other states that wish to operate as a third party agency inspecting registered/certified manufacturers located in their state and structures manufactured in their state that are to be shipped to Colorado must have existing statutory authority to regulate the design and construction of factory-built structures and enter into a memorandum of understanding with Colorado to establish recognition of the following:

(A) Acceptance of construction codes that are adopted by the State of Colorado Housing Board for factory-built structures sold into or offered for sale in Colorado. (See Rule 2 of these rules).

(B) Acceptance of the design evaluation and approval performed by the Division of Housing or other third party agency for structures sold into or offered for sale in Colorado.

(C) Performance of facility certifications and other inspection requirements. Routine inspections include performing inspections of at least one (1) unit in each phase of manufacturing and performing a minimum of a rough, final, and other inspections and/or tests (as required in Rule 2 of these rules) when a production line process is not being utilized. Also to place the manufacturer on a higher frequency of inspection when it is unable to conform, on a continuing basis, to approved Quality Control procedures and or approved plans and standards.

(D) Evaluation, at the manufacturing facility, of code compliance problems resulting from consumer complaints on labeled Colorado structures; work with the manufacturer(s) in resolving such complaints by adequately following up and assisting them in correcting the complaint issue(s), and their production and/or inspection process.

(E) Provide sixty (60) days notice before withdrawing from the memorandum of understanding, thereby allowing a manufacturer sufficient time to obtain a new third party agency.

4.33 Manufacturers contracted with a firm to perform its inspections are required to be inspected by that entity. A manufacturer may contract with more than one approved third party agency to perform these services. If more than one third party agency is under contract, the Division of Housing must be notified as to which inspections each agency is assigned; more than one agency cannot be assigned to the same inspection.

4.33.1 Approved third party agencies are authorized to conduct certifications, in-plant production inspections, recommend certified manufacturer status, in-plant evaluations of the plant's quality control procedures, review manufacturer engineering manuals, approve plant construction plans, or perform on-site construction (OC) field inspections, in accordance with Division of Housing approved procedures and documents.

4.33.2 The structure will be inspected to the approved plans; except where the plans are not specific, then the inspection will be to the standards. The third party agency will also monitor the facility personnel performing the construction, testing, and inspections.

4.33.3 A third party agency, when a facility is not certified, must conduct at a minimum a rough, final, and other inspections as required per code (see Rule 2 of these rules) for all structures manufactured. For tiny homes, a vehicle chassis inspection must be completed.

4.33.4 After the Division approves certified status for a manufacturer based on the recommendation from an approved third party agency OR the Division of Housing if the manufacturer has requested the Division of Housing grant it certified manufacture status, a minimum of one (1) phase of construction for each structure being produced for Colorado must be inspected by the third party agency. In the course of each visit, the third party agency may also complete an inspection of every phase of the production, systems testing, and of every structure in production as well as a random sampling of finished product on site.

4.33.5 Whenever the third party agency finds that a manufacturer is unwilling or unable to conform on a continuing basis to the approved quality control procedures, or approved plans or standards, that manufacturing facility will be placed on a higher frequency of inspection. The Division of Housing must be notified and the certification labels for units held until the manufacturer demonstrates that it can perform within its approved standards. If after three (3) consecutive inspections, the last inspection still indicates that the manufacturer is not able to perform within standards, all remaining insignias paid for by the manufacturer will be returned to the Division of Housing and the manufacturer will need to reapply for certified status after the time period in 7.1.1.

4.33.6 Additional information, such as increased frequency and routine quality assurance inspection reports, will be requested by the Division of Housing in order to review the inspections conducted on specific units.

4.33.7 The third party agency is required to provide its own inspection label to be affixed adjacent to the Colorado insignia of approval on each structure to be installed in Colorado prior to shipping.

4.33.8 All manufacturers that use a third party agency, other than another state, to perform production inspections, recommendations for certified manufacturer status, evaluate quality control procedures, approve engineering manuals, or approve plans, must have

such agency request approval from the Division of Housing to be an approved third party agency for the State of Colorado. Approval requests must contain the following minimum requirements:

(A) Name and address of the entity making application.

(B) Categories for which the third party agency seeks approval.

(C) A list of key personnel, with resumes, indicating their primary functions or duties.

(D) The number of years the entity has actively engaged in the business for which it seeks approval.

(E) A statement by the third party agency that it will adhere to all the requirements of the Division of Housing.

(F) An explanation of its plan review, plant certification, and/or inspection procedures, including copies of the quality assurance and other inspection reports.

(G) A copy of the third party agency's International Code Council (ICC), International Accreditation Service Board (IAS).The Division of Housing may consider alternative accreditation upon request.

(H) A copy of the Colorado professional engineer or architect certification for any employee that will be responsible for plan review and approval work as required.

(I) A copy of the Colorado professional license or ICC building inspector certifications (commercial or residential) for all personnel that will be performing production facility inspections as required.

(J) Agreement to furnish any other existing records that the Division of Housing may deem necessary in order to properly evaluate and grant approval.

(K) A statement that it is independent and does not have any actual or potential conflict of interest and is not affiliated with, influenced by, or controlled by any present or potential client manufacturer in any manner that might affect its capacity to render service or reports of findings objectively and without bias.

(L) The request must contain the signature of a responsible officer, owner, or partner of the submitting third party agency.

(M) A list of manufacturers of factory-built structures that are currently inspected.

(N) Third party agencies recommending certified manufacturer status must also provide details and documentation on how the agencies evaluation process meets the states criteria in Rule 4.9. This should include checklists, pass/fail criteria, a sample recommendation, and internal quality control and quality improvement documentation.

4.33.9 Third Party Agencies that wish to perform inspections of registered/certified manufacturers and their structures must agree to the following:

(A) Acceptance of construction codes that are adopted by the State of Colorado Housing Board for factory-built structures sold into or offered for sale in Colorado. (See Rule 2 of these rules).

(B) Acceptance of the design evaluation and approval performed by the Division of Housing or third party agency for structures sold into or offered for sale in Colorado.

(C) Acceptance and use of the Division of Housing's "Performance Criteria for Monitoring the In-Plant Quality Control Systems of Factory Built Plants" for in-plant inspection agencies or Division of Housing approved third party agency adopted criteria.

(D) Acceptance and use of the Division of Housing "Performance Criteria for Factory-Built Plan Review and Approval" for plan review agencies or Division of Housing approved agency adopted criteria.

(E) Performance of facility certifications and other inspection requirements. Routine inspections include performing inspections of at least one (1) unit in each phase of manufacturing and performing a minimum of a rough, final and other inspections and/or tests (as required in Rule 2 of these rules) when a production line process is not being utilized. Also to place the manufacturer on a higher frequency of inspection when it is unable to conform, on a continuing basis, to approved Quality Control procedures and or approved plans and standards.

(F) Performance of inspection requirements. Routine inspections include performing inspections of at least a minimum of a rough, final, and/or other inspections and/or tests of on-site construction items. Also to notify the Division of Housing when a manufacturer is unable to conform, on a continuing basis, to approved plans, standards, and/or make appropriate corrections to construction code compliance issues.

(G) Evaluation at the manufacturing facility of code compliance problems resulting from consumer complaints on labeled Colorado units; work with the manufacturer(s) in resolving such complaints by adequately following-up and assisting them in correcting the complaint issue(s) and their production and/or inspection process.

(H) Provide sixty (60) days' notice if no longer interested in fulfilling the above terms, thereby allowing a manufacturer sufficient time to obtain a new third party agency.

4.33.10 Third party agencies may only work in the specific categories for which the Division of Housing has granted approval in writing.

4.33.11 The performance (every aspect of all actions) of all third party agencies will be periodically monitored by the Division of Housing at a frequency adequate to assure that they are fulfilling their responsibilities as required in these rules. The purpose of these certification and other inspections are to evaluate the performance of the manufacturer and inspection agency in ensuring the selected units comply with approved plans and construction codes. Based upon finding(s) of inadequate performance, the frequency of inspections may be increased as determined by the Division of Housing procedures.

4.33.11.1 The monitoring activities carried out by the Division of Housing will consist of the following:

(A) Performing oversight inspections on structures that are shipped to Colorado or produced in Colorado.

(B) Reviewing all records of interpretations of the standards made by the third party agency to determine whether they are consistent and proper.

(C) Reviewing inspection reports, records, and other documents to assure that third party agencies are carrying out all their responsibilities as set forth in these rules.

(D) Reviewing records to assure that the third party agency is maintaining proper label control and records pursuant to the requirements of this program.

4.32.11.2 The Division of Housing will, upon written request, investigate complaints related to adopted construction code interpretation and enforcement. A written request must identify the third party agency, the location of the structure(s) in question, the nature of the dispute, the code section reference, and all involved parties with contact information. Upon receipt of the request, the Division will contact all parties for a written response to the issues. After any necessary follow up, the Division will issue to all parties an interpretation to resolve the code dispute. The Division's interpretation may be appealed to the Colorado State Housing Board's Technical Advisory Committee. The decision of the committee is final.

Rule 5. Sellers of Manufactured Homes

Registration

5.1 Exceptions:

5.1.1 A Colorado licensed real estate broker is exempt from the requirement to be a registered seller when selling manufactured homes or tiny homes pursuant to section 24-32-3323(4)(b), C.R.S., if they are acting as a third party (do not own the manufactured home or land it is installed on) in the transaction and are involved in negotiating the sale or lot rent of the land the manufactured home or tiny home is installed on in addition to the sale of the manufactured home or tiny home.

5.1.2 A registration as a seller is not required for any transaction involving the sale of a factory-built structure, residential or nonresidential, that is constructed to the International Building Code (IBC).

5.2 Manufacturers who sell direct to purchasers of one or two family dwellings must register as a seller with the Division of Housing and follow all statutory and administrative rule requirements of this Rule 5.

5.3 As part of the registration process, a seller is required to establish and maintain an escrow account for all manufactured housing or tiny home down payments received from purchasers during the annual registration period if the total amount received prior to the delivery (as defined pursuant to section 24-32-3302(6.5), C.R.S.) of the manufactured homes is greater than $50,000; they elect to not obtain the coverage identified in Rule 5.3(B); and the money collected is not utilized for purposes of Rule 5.3(C)(2) and (3).

(A) If unable to establish an escrow account, for purposes of compliance with this rule, a seller may establish a trust account.

(B) All money deposited in an escrow or trust account, except for money distributed for purposes of Rule 5.3(C)(2) and (3), must be held in the account until a manufactured home is delivered or the sale is terminated, including a complete accounting of all money.

(C) The Division of Housing will conduct an audit of each seller's escrow or trust account at least once every two years.

5.4 Pursuant to sections 24-32-3301(c)(II) and 24-32-3324(2), C.R.S., a seller is also required to establish and maintain a letter of credit, certificate of deposit issued by a licensed financial institution, or a surety bond issued by an authorized insurer in order to obtain and keep their registration in active status for that year as follows:

(A) A minimum coverage amount of $50,000 for their annual registration period to cover all down payments received by the seller from any purchasers prior to the delivery of manufactured homes during that registration period.

(B) If a seller collects more than $50,000 in down payments from purchasers during their registration period, then the seller must at that point obtain coverage that is equal to or greater than all down payments received by the seller from all purchasers.

(C) The following transactions are not subject to the coverage requirements of (B) in this rule:

(1) Any down payments that are deposited in a Division-approved escrow or trust account;

(2) Any portion of the down payments distributed within 30 days for specific services that are detailed in the contract between the purchaser and the seller and are clearly invoiced for, or sent to the manufacturer to construct the manufactured home; or

(3) Any nominal sales promotion amount billed to potential purchasers for the primary purpose of holding a pricing level on the manufactured home.

5.5 A registration may have more than one location under a parent company in which case they all must be under the same registration and covered by the same letter of credit, certificate of deposit, or surety bond. The business name on the registration and the business name on the letter of credit, certificate of deposit, or surety bond must match.

5.6 Once a complete application is received by the Division of Housing, the date of registration issued will be the same as the dates on the letter of credit, certificate of deposit, or surety bond. They should all be dated on the first day of the month.

5.7 All letters of credit, certificate of deposits, or surety bonds must include language that the Division of Housing be listed on the financial security device and may be drawn upon by the Division of Housing after an enforcement action as described in section 24-32-3324, C.R.S.

Renewal

5.8 A registration is active for one (year) from the date of issuance and a registered seller will be notified a reminder to renew thirty (30) calendar days in advance of the expiration date of their registration.

5.9 A new application, new letter of credit, certificate of deposit, or surety bond is required to be submitted for the renewed year.

Sales Contract

5.10 In addition to the requirements provided in section 24-32-3325, C.R.S., a seller:

(A) Is not required to return any portion of down payment(s) made prior to the delivery of the manufactured home if that money was used for specific services detailed in the contract or sent to the factory to cover its construction costs if this is clearly provided in the executed sales contract between seller and purchaser.

(B) May collect additional amounts from a purchaser if the purchaser cancels an approved order if deposits were sent to the factory that are not adequate to cover purchased materials and expenses associated with pre-construction activity for the manufacturer and seller if clearly outlined in the contract.

5.11 A seller is required to retain true copies of all sales contracts, down payment receipts, depository receipts, evidence of delivery documents, and evidence the sale was finalized or terminated for a period of three years.

5.12: A seller is required to inform the buyer of a manufactured home or a tiny home, to be installed on a permanent or temporary foundation in an area of the state without a local building department, that the foundation must be designed by a Colorado licensed design professional. Plans are to be submitted to the Division of Housing for review and approval, and construction is to be inspected and approved by the Division of Housing. This notification may be inserted in the contract, or as an attachment or amendment to the contract, or separate from the contract as long as the homeowner signature is obtained.

Rule 6. Installations of Manufactured Homes and Tiny Homes

6.1 Every manufactured home, as defined by sections 24-32-3302(20), C.R.S., to include a “multi-family structure” as defined in Rule 1.17, or a tiny home as defined by section 24-32-3302(35), C.R.S., that is installed at a temporary or permanent location and is designed and commonly used for occupancy by persons for residential purposes, must display a certificate of installation (insignia) issued by the Division of Housing or an authorized party, certifying that the unit is installed in compliance with the manufacturer’s instructions or the Manufactured Housing Installation Standards adopted by the Division in rules 2.12 through 2.15.

6.1.1 Temporary installations for the purpose of home display prior to use as a residence which will be relocated to another location are exempted from these rules provided these installations are for display use only with no type of occupancy.

6.1.2 Except where specifically excluded from Rule 6, all installation standards apply to manufactured homes and tiny homes.

6.2 Prior to beginning the installation of a manufactured home or tiny home, the owner (authorized to install their own home subject to the requirements and limitations of section 24-32-3315(1)(c), C.R.S.) or registered installer who is installing a manufactured home or tiny home must submit a complete and accurate application for an Installation Authorization issued by the Division or certified installation inspector, unless a participating jurisdiction is inspecting and certifying the installation.

6.2.1 Owners or registered installers must display an Installation Authorization at the site of the manufactured home or tiny home, located in any jurisdiction outside the authority of a

"participating jurisdiction" as defined in Rule 1.17, to be installed until an installation certification is attached to the manufactured home or tiny home certifying that the installation is in compliance with the manufacturer's installation instructions or the installation standards in rules 2.12 through 2.15 of these rules.

6.2.2 Each authorization for installation will contain the identity of the installer and owner as well as phone number and contact person, and identify the installer as the home owner, or a registered or certified installer. The certificate will also include the name, address, and telephone number of the individual or agency issuing the Installation Authorization.

6.2.3 Owners or registered installers installing a home in a jurisdiction of the state where there is not a local building department must install the home on a foundation that has been designed and stamped by a Colorado licensed design professional and the foundation inspected by the Division of Housing.

6.3 A copy of the manufacturer's instructions must be available at the time of installation and inspection of each new manufactured home or tiny home. The installer is responsible to maintain a copy of the manufacturer's instructions at the installation site.

6.3.1 Whenever the applicable standard (manufacturer's instructions, NFPA 225, etc.) for the installation of the manufactured home or tiny home is not present at the time of the inspection, the inspector may fail the inspection and require a re-inspection of the installation. All costs of the inspection and any following re-inspection will be borne by the installer.

6.3.2 Where the manufactured home or tiny home is used or is being relocated, the manufacturer's instructions will be used if available. If the manufacturer's instructions are not available, the applicable adopted alternate standard listed in rules 2.12 through 2.15 of these rules will be used for the installation.

6.4 All manufactured homes or tiny homes that are found to be in compliance with installation requirements must have a certification of installation (copper colored 3"x5" insignia for modular and tiny homes or gold colored 3"x5" for multi-family) completed and permanently attached by the inspector making the inspection or a certified installer.

6.4.1 A certification of installation must be affixed at the interior electrical panel or under the sink cabinet.

6.4.2 Application of the certification of installation is evidence that permanent utility service may be established.

6.5 When a manufactured home or tiny home installation is not found in compliance with the applicable manufacturer's instructions or other applicable standard or approved plans, the installer or manufacturer must be notified in writing by the inspector.

6.5.1 Determination of the responsible party must be to the best of the inspector's knowledge. Documentation must be provided to the inspector for changing a responsible party.

6.5.2 The inspector may, at the time of the inspection, include in the inspection report instructions for the installer to call for re-inspection at any stage to prevent cover up of any part of the installation requiring re-inspection by the inspector.

6.6 The installer must pay for any repairs required to bring the installation into compliance. The installer will pay for any subsequent inspections required by the Division or certified inspector.

6.7 If a vacant manufactured home or tiny home fails the installation inspection because of conditions that endanger the health or safety of the occupant, the manufactured home or tiny home cannot be occupied. The unsafe manufactured home or tiny home will be visibly posted with a "Red Tag Notice" to prevent occupancy.

6.8 If an installation or subsequent repair of an installation by an installer fails to meet the instructions or standards within the time limit allowed by the inspector, the inspector must notify the installer of the specific violation(s). All installers must correct any installation violations within thirty (30) calendar days of inspection or be subject to the issuance of a "Red Tag Notice".

6.9 An installer cannot reduce or eliminate their responsibility to perform an "installation" as defined pursuant to section 24-32-3302(16), C.R.S., including without limitation supporting, blocking, leveling, securing, or anchoring a manufactured home on a permanent or temporary foundation system, and connecting multiple or expandable sections of the home.

Registration

6.10 Pursuant to sections 24-32-3302(16), 24-32-3302(17), 24-32-3302(31), 24-32-3303(1)(d), 24-32-3304(1)(d), 24-32-3305(1)(c), 24-32-3315, 24-32-3317(3), 24-32-3319, and 24-32-3320, C.R.S., a person must be actively registered with the Division of Housing before attempting to install a manufactured home or tiny home regardless of whether they are paid for such service, unless exempted from registration requirements pursuant to section 24-32-3315(1)(b) or (c), C.R.S.

6.10.1 Those that are exempted from registration requirements in statute are still required to comply with all provisions of this rule as well as the installation standards provided in rules 2.12 through 2.15 of these rules.

6.11 In order to be eligible for registration, an application meeting the requirements outlined in sections 24-32-3315(2), (3), and (4), C.R.S., must be filed with the Division of Housing, including the following:

6.11.1 Experience; training; education; liability insurance; and letter of credit, certificate of deposit, or bond requirements pursuant to sections 24-32-3315(2), 24-32-3315(4)(b), 24-32-3315(4)(b.5), and 24-32-3315(4)(c), C.R.S., include the following:

6.11.1.1 An individual applying to be a registered installer for one- and two-family dwellings that are factory-built residential structures constructed to the International Residential Code (IRC) as adopted by the State Housing Board (modular homes) and tiny homes must meet the following requirements in addition to what is provided in section 24-32-3315(4), C.R.S.:

(A) 12-months of installation experience under direct supervision of a registered or certified installer, which includes a minimum of 1,800 hours of experience installing at least five modular homes, including supporting, blocking, leveling, securing, anchoring, and connecting multiple or expandable sections of the home.

OR

(B) 3,600 hours of experience in the construction of modular homes;

(C) 3,600 hours of experience as a building construction supervisor;

(D) 1,800 hours as an active modular home installation inspector;

(E) Completion of one year of a college program in a construction-related field; or

(F) Any combination of experience or education from paragraphs (B) through (E) of this rule that totals 3,600 hours;

OR

(G) Residential Contractor Class C for the installation of residential buildings regulated by the International Residential Code (IRC), limited to the height of not greater than three stories above grade and to include buildings listed in Section 101.2 of the IRC.

AND

(H) Eight hours of Division-approved installation education: four of the hours must consist of training on modular IRC installation standards which may include tiny home installation standards, and the other four hours on the Division of Housing's Manufactured Housing Installation Program.

AND

(I) General liability insurance coverage with a minimum of $1,000,000 per occurrence.

AND

(J) A letter of credit, certificate of deposit issued by a licensed financial institution, or surety bond issued by an authorized insurer for $15,000 and is payable to the Division of Housing upon execution of an enforcement action.

6.11.1.2 An individual applying to be a registered installer for mobile homes and manufactured homes constructed to the federal standards (HUD-code homes) must meet the following requirements in addition to what is provided in section 24-32-3315(4), C.R.S.:

(A) 12-months of installation experience under direct supervision of a registered or certified installer, which includes a minimum of 1,800 hours of experience installing at least five manufactured homes, including supporting, blocking, leveling, securing, anchoring, and connecting multiple or expandable sections of the home.

OR

(B) 3,600 hours of experience in the construction of manufactured homes;

(C) 3,600 hours of experience as a building construction supervisor;

(D) 1,800 hours as an active manufactured home installation inspector;

(E) Completion of one year of a college program in a construction-related field; or

(F) Any combination of experience or education from paragraphs (B) through (E) of this rule that totals 3,600 hours;

OR

(G) Certified or licensed to perform manufactured home installations in a state with a qualifying installation program if that state's requirements are substantially equivalent to Colorado's.

AND

(H) Eight hours of Division-approved installation education: four of the hours must consist of training on the federal installation standards, part 3285, and the other four hours on the Division of Housing's Manufactured Housing Installation Program.

AND

(I) General liability insurance coverage with a minimum of $1,000,000 per occurrence.

AND

(J) A letter of credit, certificate of deposit issued by a licensed financial institution, or surety bond issued by an authorized insurer for $15,000 and is payable to the Division of Housing upon execution of an enforcement action.

6.11.1.3 An individual applying to be a registered installer of multi-family structures as defined by Rule 1.17 must meet the following requirements in addition to what is provided in section 24-32-3315(4), C.R.S.:

(A) 12-months of installation experience under direct supervision of a registered or certified installer, which includes a minimum of 1,800 hours of experience installing multi-family structures, including supporting, blocking, leveling, securing, anchoring, and connecting multiple or expandable sections of the structure.

OR

(B) Building Contractor B for the installation of commercial buildings regulated by the International Building Code (IBC), not considered high rise.

(C) Building Contractor A for the installation of commercial buildings regulated by the International Building Code (IBC), considered high rise.

(D) Colorado Registered Design Professional who has prior experience in the design and construction of multi-family structures.

AND

(E) Eight hours of Division-approved installation education: four of the hours must consist of training on the installation of multi-family structures and the other four hours on the Division of Housing's Manufactured Housing Installation Program.

AND

(F) General liability insurance coverage with a minimum of $1,000,000 per occurrence.

(H) A letter of credit, certificate of deposit issued by a licensed financial institution, or surety bond issued by an authorized insurer for $15,000 and is payable to the Division of Housing upon execution of an enforcement action.

Certification

6.12 Pursuant to sections 24-32-3302(4), 24-32-3315(7)(a), and 24-32-3317(2), C.R.S., a registered installer may apply to the Division of Housing for certification under one of the three following classifications or all three if qualified to do so:

6.12.1 Class IRC – Modular and tiny home only. Submit evidence of five (5) Division-approved installations of manufactured homes and tiny homes built to the building codes adopted by the State Housing Board, completed within an 18-month period.

6.12.2 Class HUD – HUD-code and mobile homes only. Submit evidence of five (5) Division-approved installations of manufactured homes built to the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., and any standard promulgated by the Secretary of the U.S. Department of Housing and Urban Development (HUD) pursuant to the federal act; completed within an 18-month period.

6.12.3 Class IBC – Multi-family structures. Submit evidence of five (5) Division-approved installations of multi-family structures built to the building codes adopted by the State Housing Board, completed within an 18-month period.

6.13 Evidence of installation must include copies of all inspection reports for each installation issued by the Division of Housing or a certified installation inspector. If in the judgment of the Division, such installer has demonstrated the ability to successfully complete installations of manufactured homes, tiny homes, or multi-family structures in accordance with the requirements of the specific classification they have applied, a certification inspection will be scheduled. Certification will be granted at that classification if the installation is approved.

6.13.1 If the review of the evidence of the installations does not clearly demonstrate the ability to successfully complete installations in compliance with the requirements, the Division may require additional installations to be performed, reviewed, and accepted prior to scheduling a certification inspection.

6.14 A certified installer is authorized by section 24-32-3317(2.3), C.R.S., to independently certify the installation by affixing a certificate of installation (insignia) authorized by the Division after the installation is completed in compliance with all requirements in any county or municipality that is not covered by a participating jurisdiction. Pursuant to section 24-32-3317(2.5), C.R.S., a

participating jurisdiction authorizes, inspects, and certifies all installations occurring within its jurisdiction, even those to be performed by a certified installer.

6.14.1 The certified installer must then report that they certified the installation to the Division.

6.14.2 Installations performed by a certified installer do not require an inspection by the Division or a certified inspector. However, pursuant to sections 24-32-3317(2.9) and 24-3317(6), C.R.S., one of the parties identified may request the Division of Housing to inspect an installation performed by a certified installer.

Renewal

6.15 A registered installer is required to timely renew their registration once a year and in compliance with the requirements of section 24-32-3315, C.R.S., in order to continue performing installations in the state of Colorado.

6.15.1 A renewal application filed with the Division of Housing must include evidence of completing four hours of approved continuing education in compliance with the education requirements listed further down in these rules.

6.16 A certified installer must timely and completely renew their registration with the Division of Housing as required above in Rule 6.15 in order to maintain their certification. A certification will automatically expire if a registration is not successfully renewed.

Education

6.17 The Division of Housing will review all educational courses submitted and will grant course approval in writing. The Division of Housing may audit courses and may request from each entity offering a Division-approved course, all instructional material and attendance records as may be necessary for an investigation. Failure to comply may result in the withdrawal of Division approval of the course.

6.18 All continuing education courses must contain at the minimum the following instructional material:

(A) Blueprint reading and comprehension.

(B) Discussion of structural issues. For example: hinged roofs, cape cod roofs, marriage line fastening and support, foundation sizing, etc.

(C) A review of Colorado law, rules and/or policies as they pertain to the technical issues being discussed at the training.

6.19 All continuing education courses may be offered and completed by distance learning.

6.20 The following course format and administrative requirements apply to all Colorado continuing installation education for installers and inspectors:

(A) Courses must be at least one hour in length and contain at least 50 instructional minutes per course hour.

(B) A maximum of eight-hours of credit may be earned per day.

(C) No course may be repeated for credit in the same registration period.

(D) Instructors may receive credit for classroom teaching hours once per course taught per year.

(E) A volunteer member of the State Housing Board's Technical Advisory Committee (TAC) may receive credit for participating in the process of recommending rule amendments/adoptions once per year.

(F) Hours in excess of the required amount may not be carried forward to satisfy a subsequent renewal requirement.

(G) No school/provider may waive, excuse completion of, or award partial credit for the full number of course hours.

6.21 Each Colorado installer or inspector is responsible for securing from the provider evidence of course completion in the form of an affidavit or certificate of attendance. Documentation must be in sufficient detail to show the name of the licensee, course subject, content, duration, date(s), and contain the authentication of the provider.

6.21.1 For distance learning an affidavit of completion signed under penalty of perjury is the only acceptable proof.

6.21.2 In person courses may have a certificate signed by the instructor at the end of the course.

6.21.3 Installers and inspectors must retain proof of continuing education completion for three years, and provide said proof to the Division upon request.

6.22 Each approved education provider must retain copies of course outlines or syllabi and complete attendance records for a period of three years.

6.23 Continuing education providers must submit an application form along with the following information at least 30-days prior to the proposed class dates:

(A) Detailed course outline or syllabus, including the intended learning outcomes, the course objectives, and the approximate time allocated for each topic.

(B) A copy of the course exam(s) and instructor answer sheet if applicable. In the absence of an exam, the criteria used in evaluating a person's successful completion of the course objectives.

(C) Copy of instructor teaching credential; if none, a resume showing education and experience which evidence the mastery of the material to be presented.

(D) A copy of advertising or promotional material used to announce the offering.

(E) Upon Division request, a copy of textbook, manual, audio, videotapes, or other instructional materials.

6.24 By offering installation continuing education in Colorado, each provider agrees to comply with relevant statutes and rules and to permit the Division of Housing to audit courses at any time and at no cost.

Inspectors

6.25 Pursuant to sections 24-32-3302(15), 24-32-3315(7)(b), 24-32-3317(2), 24-32-3317(5)(a), 24-32-3317(6), 24-32-3317(7), 24-32-3317(8), 24-32-3317(9), and 24-32-3322, C.R.S., the Division may authorize independent contractors to perform installation inspections and enforcement of proper installation of manufactured homes and tiny homes.

6.26 Pursuant to section 24-32-3317(8), C.R.S., the Division of Housing establishes the following qualifications and area of expertise necessary for inspecting manufactured homes and tiny homes as acceptable in addition to the qualifications and requirements already listed in the statute:

(A) Class IRC and HUD - when inspecting the installation of mobile, manufactured HUD-code homes, or IRC modular homes or tiny homes:

(1) Professional civil engineer – State of Colorado professional license in engineering;

(2) State of Colorado licensed architect;

(3) Local housing inspector – a manufactured home or tiny home or residential building inspector employed by the local authority having jurisdiction over the site of the home, provided it is a participating jurisdiction;

(4) International Code Council certified inspector;

(5) Previously a Colorado certified installer; or

(6) Class C contractor license for the installation of residential buildings regulated by the codes and standards of the IRC, limited to the height of not greater than three stories above grade and buildings classified R-2, R-3, and R-4 in section 101.2 of the IRC; and

(7) Twelve hours of Division-approved installation education: four of the hours must consist of training on the federal installation standards, part 3285; four of the hours must consist of training on modular IRC installation standards; and four hours on the Division of Housing's Manufactured Housing Installation Program.

OR

(B) Class IBC - when inspecting the installation of multi-family structures:

(1) Colorado Registered Design Professional who specializes in the field they are inspecting;

(2) Local housing inspector – a commercial or combination building inspector employed by the local authority having jurisdiction over the site of the home, provided it is a participating jurisdiction;

(3) International Code Council certified commercial ~~or~~ combination inspector;

(4) A Division of Housing approved third-party inspection agency;

(5) Class B Commercial Building Contractor License for the installation of commercial buildings regulated by the code and standards of the IBC not considered high rise construction; or

(6) Class A Commercial Building Contractor License for the installation of commercial buildings regulated by the code and standards of the IBC considered high rise construction; and

(7) Twelve hours of Division-approved installation education: eight of the hours must consist of training on multi-family structure installation standards and four hours on the Division of Housing's Manufactured Housing Installation Program.

6.27 The Division of Housing may revoke the certification of any inspector who fails to maintain the minimum requirements for the certification, has a conflict of interest impairing their ability to make impartial inspections, or if investigation of complaints by the Division reveals that the inspector has repeatedly failed to enforce the requirements of these rules.

6.28 A certified inspector may not perform inspections where the inspector has a conflict of interest that may impair their ability to make fair and impartial inspections.

6.29 A certified inspector is required to renew their certification every three (3) years in compliance with section 24-32-3317(8), C.R.S.

6.29.1 A renewal application filed with the Division of Housing must include evidence of completing four hours of approved continuing education for each of the three years (total of 12 hours) in compliance with the education requirements listed further up in these rules.

6.30 Where a local jurisdiction has established a building department, the building official or other approved authority may make a written request to be the exclusive independent installation inspection agency within their legal boundaries as a "participating jurisdiction".

6.30.1 When granted by the Division of Housing, all manufactured home or tiny home installation inspections in that area will be made by that participating jurisdiction's certified installation inspectors or by a certified installation inspector approved by the jurisdiction.

6.30.2 Division inspectors or Division designated independent inspectors may perform inspections within the participating jurisdiction in response to a complaint.

Rule 7. Enforcement

This rule clarifies the enforcement actions available to the Division of Housing pursuant to sections 24-32-3307, 24-32-3308(1), 24-32-3311(a.3), 24-32-3313, 24-32-3315(5), 24-32-3315.5(2), 24-32-3317(2.9), 24-32-3317(3)(a), 24-32-3317(3)(b), 24-32-3317(9), 24-32-3320, 24-32-3324(2), 24-32-3325(3), or 24-32-3326(2), C.R.S..

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7.1 The Division of Housing may deny, suspend, fine, or revoke a registration or certification after notice and hearing pursuant to sections 24-4-104 & 24-4-105, C.R.S., whenever a violation of any provision of these regulations or statutes occurs, or when a registration or certification is issued on the basis of incorrect information supplied by the applicant.

7.1.1 A person or entity with a registration or certification that is revoked may not apply for a new registration or certification until at least one (1) year has passed from the date it went into effect and must comply with any remediation requirements imposed by the Division of Housing.

7.1.2 The Division may, in its discretion, seek the summary suspension of a registration or certification under § 24-4-104(4)(a), C.R.S., if the Division concludes that the registered or certified entity or individual has committed deliberate and willful violations of Colorado law or if the public health, safety, or welfare imperatively requires emergency action.

7.2 A certified inspector that knows of an installation that is in default and has not been corrected by subsequent repair must request that the Division investigate the installation. The Division may revoke, suspend, or fail to renew the registration of the installer and cause the forfeiture of the installer's surety bond on behalf of the owner of the manufactured home for failing to comply with the Division's standards regarding installation of a manufactured home.

7.3 The Division may investigate complaints filed against manufacturers, sellers, or installers as necessary to enforce and administer these regulations.

7.4 The Division may designate a certified inspector to perform inspections on behalf of the Division to aid in the investigation of consumer complaints.

7.5 In the event the Division of Housing receives funds from the forfeiture of a letter of credit, certificate of deposit, or surety bond, pursuant to (i) section 24-32-3315(2), C.R.S., or (ii) section 24-32-3324(2), C.R.S., the Division of Housing shall distribute those funds to the individual entitled to the funds pursuant to those statutes. If more than one person is eligible to make a claim, then the Division of Housing is required to pro rate the total amount of the letter of credit, certificate of deposit, or surety bond among all known claimants using the following formula:

Take the eligible amount paid by each verified claimant and divide it by the total dollar amount of eligible payments received by the registered installer or seller from all verified claimants, and multiply it by the amount recovered from the letter of credit, certificate of deposit, or surety bond to get the specific amount the claimant will receive of the total amount available to all claimants.

APPENDIX A

Table 6.2.3.1.3(a)

Single and Multi Section Pier Loads Without Perimeter blocking
(at both I beams, in Lbs)
See section 6.2.5.5 for required perimeter blocking at side wall openings
See Table 6.2.3.1.3(c) for piers required under marriage line openings

Roof snow load (PSF)	Section Width (feet)	Maximum pier spacing			
		4'	6'	8'	10'
30	10	2360	3390	4420	5450
	12	2704	3906	5108	6310
	14	3048	4422	5796	7170
	16	3392	4938	6484	8030
40	10	2600	3750	4900	6050
	12	2984	4326	5668	7010
	14	3368	4902	6436	7970
	16	3752	5478	7204	8930
60	10	3080	4470	5860	7250
	12	3544	5166	6788	8410
	14	4008	5862	7716	9570
	16	4472	6558	8644	10730
80	10	3560	5190	6820	8450
	12	4104	6006	7908	9810
	14	4648	6822	8996	11170
	16	5192	7638	10084	12530
100	10	4040	5910	7780	9650
	12	4664	6846	9028	11210
	14	5288	7782	10276	12770
	16	5912	8718	11524	14330

Notes:
1. See Table 6.3.3 for footing design using the noted loads
2. This Table is based on the following design assumptions:
   Nominal width is used, 12" eave, 20plf chassis dead load, 300 lbs. Pier dead load,
   35 plf wall dead load, 10psf roof dead load and 6 psf floor dead load
3. Interpolation for other pier spacing is permitted
4. These loadings are not for flood or seismic conditions.

Table 6.2.3.1.3(b)

Single and Multi Section Pier Loads With Perimeter blocking
(Lbs)
See section 6.2.5.5 for required perimeter blocking at side wall openings
See Table 6.2.3.1.3(c) for piers required under marriage line openings

		Frame				Exterior wall				Marriage wall			
Roof snow load (PSF)	Section Width (ft)	Maximum pier spacing				Maximum pier spacing				Maximum pier spacing			
		4'	6'	8'	10'	4'	6'	8'	10'	4'	6'	8'	10'
30	10	1400	1950	2500	3050	1400	1950	2500	3050	2480	3420	4360	5300
	12	1584	2226	2868	3510	1560	2190	2820	3450	2800	3900	5000	6100
	14	1768	2502	3236	3970	1720	2430	3140	3850	3120	4380	5640	6900
	16	1952	2778	3604	4430	1880	2670	3460	4250	3440	4860	6280	7700
40	10	1400	1950	2500	3050	1640	2310	2980	3650	2880	4020	5160	6300
	12	1584	2226	2868	3510	1840	2610	3380	4150	3280	4620	5960	7300
	14	1768	2502	3236	3970	2040	2910	3780	4650	3680	5220	6760	8300
	16	1952	2778	3604	4430	2240	3210	4180	5150	4080	5820	7560	9300
60	10	1400	1950	2500	3050	2120	3030	3940	4850	3680	5220	6760	8300
	12	1584	2226	2868	3510	2400	3450	4500	5550	4240	6060	7880	9700
	14	1768	2502	3236	3970	2680	3870	5060	6250	4800	6900	9000	11100
	16	1952	2778	3604	4430	2960	4290	5620	6950	5360	7740	10120	12500
80	10	1400	1950	2500	3050	2600	3750	4900	6050	4480	6420	8360	10300
	12	1584	2226	2868	3510	2960	4290	5620	6950	5200	7500	9800	12100
	14	1768	2502	3236	3970	3320	4830	6340	7850	5920	8580	11240	13900
	16	1952	2778	3604	4430	3680	5370	7060	8750	6640	9660	12680	15700
100	10	1400	1950	2500	3050	3080	4470	5860	7250	5280	7620	9960	12300
	12	1584	2226	2868	3510	3520	5130	6740	8350	6160	8940	11720	14500
	14	1768	2502	3236	3970	3960	5790	7620	9450	7040	10260	13480	16700
	16	1952	2778	3604	4430	4400	6450	8500	10550	7920	11580	15240	18900

Notes:
1. See Table 6.3.3 for footing design using the noted loads
2. This Table is based on the following design assumptions:
   Nominal width is used, 12" eave, 20plf chassis dead load, 300 lbs. Pier dead load,
   35 plf wall dead load, 10psf roof dead load and 6 psf floor dead load
3. Interpolation for other pier spacing is permitted
4. These loadings are not for flood or seismic conditions.

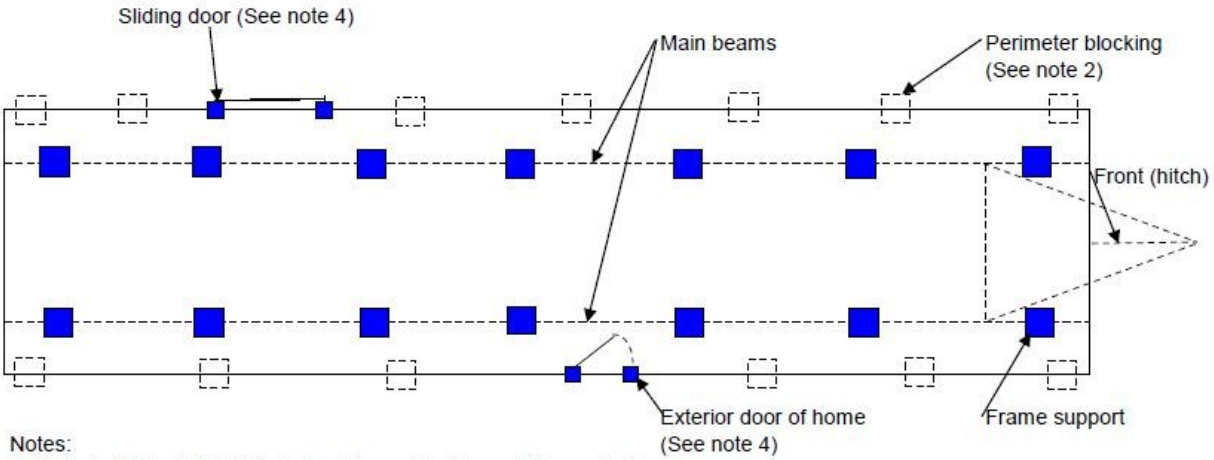
Table 6.2.3.1.3(c)

Multi Section Pier Loads Under Marriage Line Openings
(Under each end of opening in Lbs)
See section 6.2.5.5 for required perimeter blocking at side wall openings

Roof snow load (PSF)	Section Width (ft)	Marriage wall opening width									
		5'	8'	10'	12'	14'	16'	18'	20'	25'	30'
30	10	1300	1900	2300	2700	3100	3500	3900	4300	5300	6300
	12	1500	2220	2700	3180	3660	4140	4620	5100	6300	7500
	14	1700	2540	3100	3660	4220	4780	5340	5900	7300	8700
	16	1900	2860	3500	4140	4780	5420	6060	6700	8300	9900
40	10	1550	2300	2800	3300	3800	4300	4800	5300	6550	7800
	12	1800	2700	3300	3900	4500	5100	5700	6300	7800	9300
	14	2050	3100	3800	4500	5200	5900	6600	7300	9050	10800
	16	2300	3500	4300	5100	5900	6700	7500	8300	10300	12300
60	10	2050	3100	3800	4500	5200	5900	6600	7300	9050	10800
	12	2400	3660	4500	5340	6180	7020	7860	8700	10800	12900
	14	2750	4220	5200	6180	7160	8140	9120	10100	12550	15000
	16	3100	4780	5900	7020	8140	9260	10380	11500	14300	17100
80	10	2550	3900	4800	5700	6600	7500	8400	9300	11550	13800
	12	3000	4620	5700	6780	7860	8940	10020	11100	13800	16500
	14	3450	5340	6600	7860	9120	10380	11640	12900	16050	19200
	16	3900	6060	7500	8940	10380	11820	13260	14700	18300	21900
100	10	3050	4700	5800	6900	8000	9100	10200	11300	14050	16800
	12	3600	5580	6900	8220	9540	10860	12180	13500	16800	20100
	14	4150	6460	8000	9540	11080	12620	14160	15700	19550	23400
	16	4700	7340	9100	10860	12620	14380	16140	17900	22300	26700

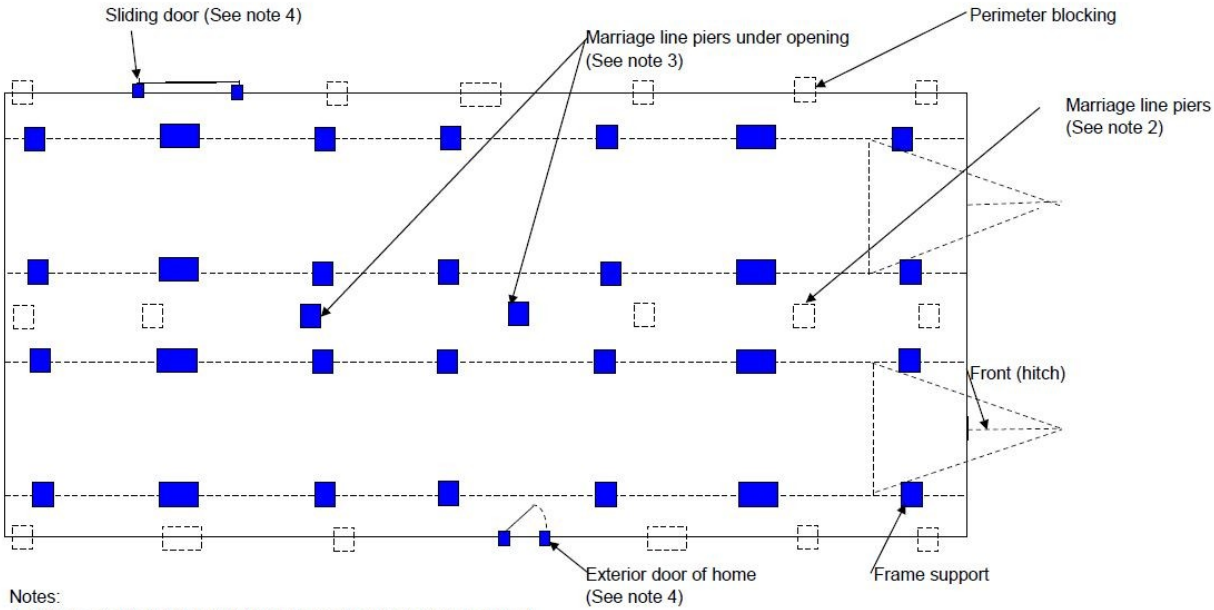
Notes:
1. See Table 6.3.3 for footing design using the noted loads
2. This Table is based on the following design assumptions:
   Nominal width is used, 300 lbs. Pier dead load,
   10psf roof dead load
3. Interpolation for other pier spacing is permitted
4. For piers supporting two adjacent openings, the required capacity is the sum of the loading from each opening.
5. These loadings are not for flood or seismic conditions.

FIGURE 6.2.5.3 Typical Blocking Diagram for a Single Section



Notes:
1. Refer to Table 6.2.3.1.3(a) when frame blocking only is required.
2. Refer to Table 6.2.3.1.3(b) when perimeter blocking is required.
3. Locate piers a maximum of 24 inches from both ends.
4. **All homes:** Place piers on both sides of sidewall exterior doors, patio doors, and sliding glass doors: under porch posts, factory-installed fireplaces, and fireplace stoves; under jamb studs at multiple window openings; and at any other sidewall openings 48 inches or greater in width.

FIGURE 6.2.5.4 Typical Blocking Diagram for a Multi-Section Home



Notes:
1. Refer to Table 6.2.3.1.3(a) when frame blocking only is required.
2. Refer to Table 6.2.3.1.3(b) when perimeter blocking is required.
3. Refer to Table 6.2.3.1.3(c) for piers under marriage line wall openings
4. Locate piers a maximum of 24 inches from both ends.
5. **All homes:** Place piers on both sides of sidewall exterior doors, patio doors, and sliding glass doors: under porch posts, factory-installed fireplaces, and fireplace stoves; under jamb studs at multiple window openings; and at any other sidewall openings 48 inches or greater in width.

Table 7.3 Connections of Multi-Box Home

Shim any gaps between structural elements prior to connection with dimensional lumber up to one inch. If gaps exceed one inch, re-position home to eliminate gapping condition.

CONNECTOR LOCATION	CONNECTOR SIZE	FASTENER ANGLE	FASTENER SPACING
Roof support beam at ridge or ceiling line	1/2 inch carraige bolts	90 degrees	48 inches on center
Roof ridge beam or ridge rail	3/8 inch lag screws with washers	Approx 45 degrees	24 inches on center each side and staggered
Roof rafter connection	4x12 inch 18 guage galv strap centered on truss and peak	90 degrees into truss	48 inches on center for straps, 5-10d nails each side of ridge
or	8 inch continuous 18 gauge galv metal sheet centered on peak	90 degrees into roof sheathing/beams/truss	8D nails at 6 inches on center each side of ridge
Floor rim joist connection	3/8 inch lag screws with washers	Approx 45 degrees	24 inches on center each side and staggered
End wall and interior wall connection	#8 wood screws	Approx 45 degrees	18 inches on center

Notes:

1. Fastener length shall be adjusted as required to obtain full penetration into all structural members being connected on both sides of the marriage line.

2. 3/8" lag screws are to be piloted with 1/4" dia. holes prior to installation.

3. When the support post for a roof support beam can only be located on one side of the marriage line, install eight 1/2" cluster bolts with washers, spaced 4" on center, centered on the post, to connect the roof support beams together.

Table 7.5.3.2.1 **Number and Location of Ground Anchors**

Section Floor Width	Main I-Beam spacing (in)	Max height from ground to strap attachment (in)	Anchor Spacing (ft)		Angle
10 ft 20 ft double wide	82.5	25	9		59 1/2
		33	12	FAR BEAM	18 1/2
		46	12	FAR BEAM	25 1/2
		67	11 1/2	FAR BEAM	34 1/2
	99.5	25	12	FAR BEAM	13 1/2
		33	12	FAR BEAM	17 1/2
		46	12	FAR BEAM	23 1/2
		67	11 1/2	FAR BEAM	32 1/2
12 ft 24 ft double wide	82.5	25	12		43
		33	10 1/2		51
		46	7 1/2		60
		67	11 1/2	FAR BEAM	31 1/2
	99.5	25	10		54
		33	12	FAR BEAM	15 1/2
		46	12	FAR BEAM	21 1/2
		67	11 1/2	FAR BEAM	29 1/2
14 ft 28 ft double wide	82.5	25	12		33
		33	12		40 1/2
		46	9 1/2		50
		67	6 1/2		60
	99.5	25	12		39 1/2
		33	11		47 1/2
		46	8		56 1/2
		67	11 1/2	FAR BEAM	27 1/2
16 ft 32 ft double wide	82.5	25	N/A		26
		33	12		33
		46	10 1/2		42
		67	8		53
	99.5	25	12		30 1/2
		33	12 1/2		38
		46	10		47 1/2
		67	7		58

Notes:
1. See Figures 7.5.3.2.1(a) and (b).
2. This Table is based on the following design assumptions:
   8' wall height, 4/12 roof pitch, 4 inch anchor inset from home edge, 12' max anchor spacing
3. Main beam spacing outside those shown may be used provided the inside strap angle from the ground to the strap is less than the angle shown and is between 30 and 60 degrees or connection is provided to both the near and far beam.Choose spacing from values shown.
4. FAR BEAM. Spacings shown with FAR BEAM require connection to **both** the near and far beam. This also applies to other main I beam spacing. See note 3.
5. Anchors must have a 3150 lbs working load capacity and be installed within 2' of each end of the home.
6. These spacings are not for flood or seismic conditions.

FIGURE 7.5.3.2.1(a) Anchor spacing and location

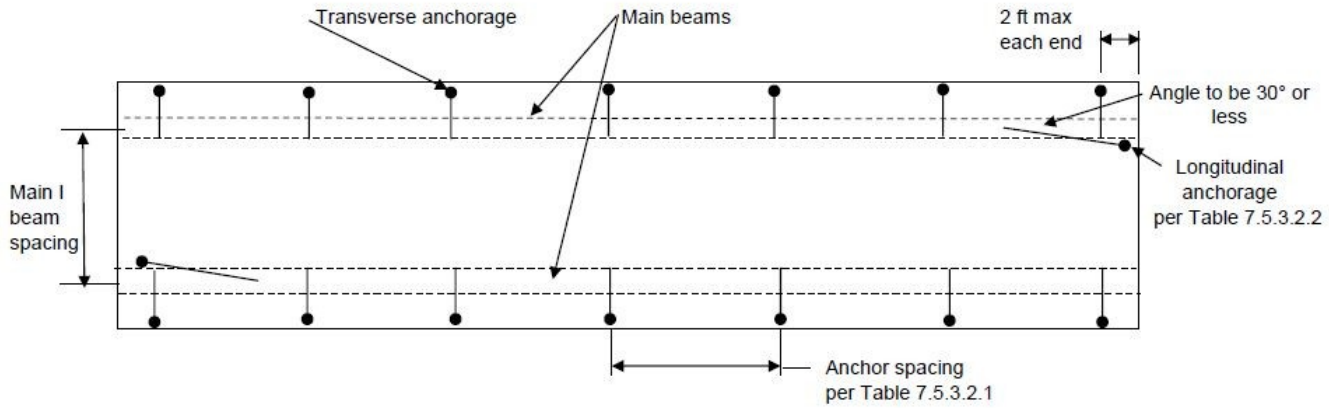
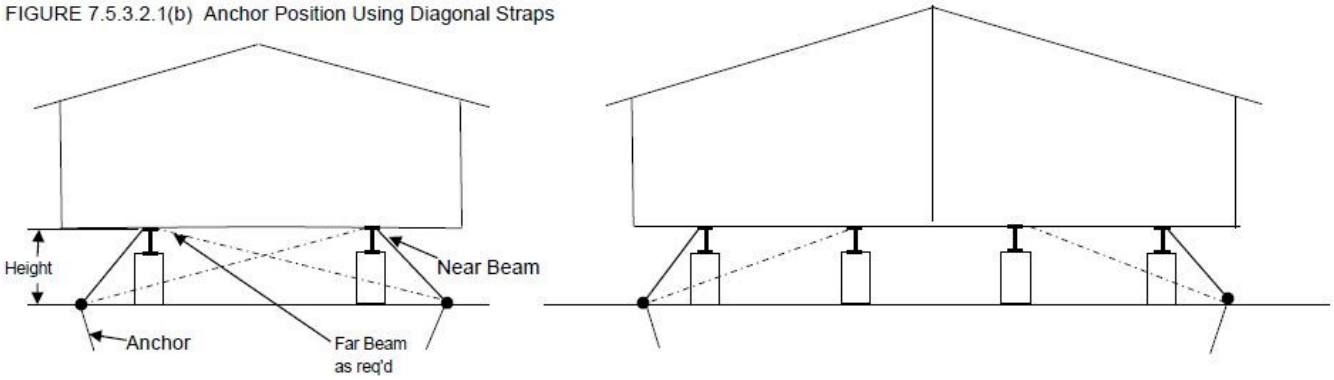


FIGURE 7.5.3.2.1(b) Anchor Position Using Diagonal Straps



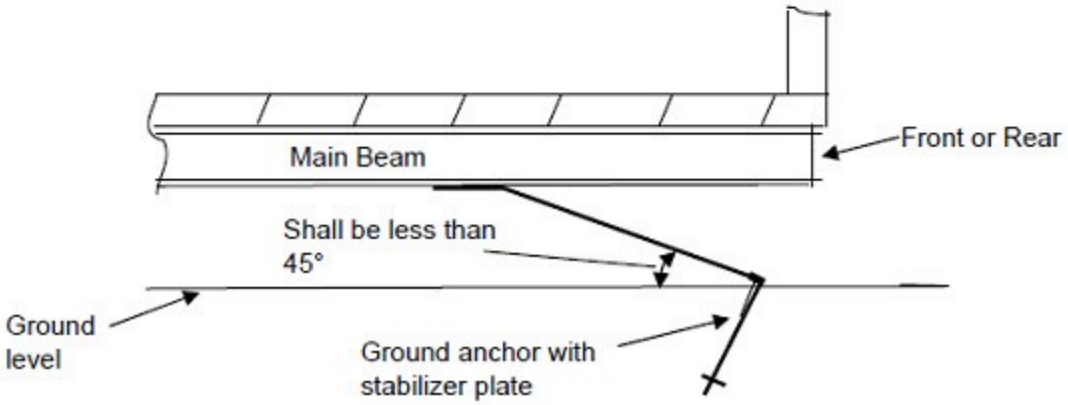
SINGLE WIDE DOUBLE WIDE

Table 7.5.3.2.2 Longitudinal Anchorage

NUMBER OF STRAPS REQUIRED AT EACH END OF THE HOME				
Number of Sections	Max Section Width (feet)			
	10	12	14	16
SINGLE WIDE	1	1	1	1
DOUBLE WIDE[1]	2	2	2	3

Footnote[1] Number of anchors may be reduced by 1 for homes greater than 60 feet in length

Notes: 1. Longitundal straps shall be attached to the home's main frame as specified by the maunfacturers installation instructions.



APPENDIX B

DEGREE DAYS AND DESIGN TEMPERATURES FOR COLORADO CITIES AND TOWNS

Location		Heating Degree Days	Design Temperatures°F Winter 97½%	Summer DB 2½%	Summer WB 2½%	Elevation (feet) above sea
1	Alamosa	8749	16	82	61	7546
2	Aspen	9922	1	81	59	7928
3	Boulder	5554	2*	91	63	5385
4	Buena Vista	8003	1	83	58	7954
5	Burlington	6320	2	95	70	4165
6	Canon City	4987	8	90	64	5343
7	Cheyenne Wells	5925	1	97	70	4250
8	Colorado Springs	6415	2	88	62	6012
9	Cortez	6667	5	88	63	6177
10	Craig	8403	14	86	61	6280
11	Creede	11375	-18	80	58	8842
12	Del Norte	7980	-4	81	60	7884
13	Delta	5927	6	95	62	4961
14	Denver	6020	1	91	63	5283
15	Dillon	11218	-16	77	58	9065
16	Dove Creek	7401	-6	86	63	6843
17	Durango	6911	4	87	63	6550
18	Eagle	8106	-11	87	62	6600
19	Estes Park	7944	-7	79	58	7525

HDD data taken from Department of Energy (Rescheck 4.4.2), Climate Data published by Rocky Mountain Chapter ASHRAE, First Edition-Centennial 1976, 1985 ASHRAE Fundamentals Handbook (See 2012 IPC appendix D).

Degrees North Latitude may be obtained at www.ncdc.noaa.gov

* Per Local. 8° per 1985 ASHRAE

DEGREE DAYS AND DESIGN TEMPERATURES FOR COLORADO CITIES AND TOWNS

Location		Heating Degree Days	Design Temperatures°F Winter	Summer		Elevation (feet)
			97½%	DB 2½%	WB 2½%	above sea
20	Ft. Collins	6368	-4	91	63	5001
21	Ft. Morgan	6460	-5	92	65	4321
22	Fraser	9777	-22	76	58	8560
23	Glenwood Springs	7313	5	91	63	5823
24	Granby	9316	-	---	---	7935
25	Grand Junction	5548	7	94	63	4586
26	Greeley	6306	-5	94	64	4648
27	Gunnison	10516	-17	83	59	7664
28	Holyoke	6583	-2	97	69	3746
29	Idaho Springs	8094	0	81	59	7555
30	Julesburg	6447	-3	98	69	3469
31	Kit Carson	6372	-1	98	68	4284
32	Kremmling	10095	-19	85	59	7359
33	La Junta	5263	3	98	70	4066
34	Lamar	5414	0	98	71	3635
35	Last Chance	------	-2	92	65	4790
36	Leadville	11500	-14	81	55	10,152
37	Limon	6961	0	91	65	5366
38	Longmont	6443	-2	91	64	4950
39	Meeker	8658	-6	87	61	6347
40	Montrose	6393	7	91	61	5830
41	Ouray	7639	7	83	59	4695

HDD data taken from Department of Energy (Rescheck 4.4.2), Climate Data published by Rocky Mountain Chapter ASHRAE, First Edition-Centennial 1976, 1985 ASHRAE Fundamentals Handbook (See 2012 IPC appendix D).

Degrees North Latitude may be obtained at www.ncdc.noaa.gov

DEGREE DAYS AND DESIGN TEMPERATURES FOR COLORADO CITIES AND TOWNS

Location		Heating Degree Days	Design Temperatures°F Winter	Summer		Elevation (feet)
			97½%	DB 2½%	WB 2½%	above sea
42	Pagosa Springs	8548	-9	85	61	7079
43	Pubelo	5413	0	95	66	4695
44	Rangely	7328	-8	93	62	5250
45	Rifle	6881	0	92	63	5345
46	Saguache	8781	-3	82	61	7697
47	Salida	7355	-3	84	59	7050
48	San Luis	8759	-10	84	60	7990
49	Silverton	11064	-13	77	56	9322
50	Springfield	5167	3	95	71	4410
51	Streamboat Springs	9779	-16	84	61	6770
52	Sterling	6541	-2	93	66	3939
53	Trinidad	5339	3	91	65	6025
54	Uravan	------	8	97	63	5010
55	Vail	9248	-14	78	59	8150
56	Walden	10378	-17	79	58	8099
57	Walsenburg	5438	1	90	63	6220
58	Wray	6160	-1	95	69	3560
59	Yuma	5890	-2	95	69	4125

HDD data taken from Department of Energy (Rescheck 4.4.2), Climate Data published by Rocky Mountain Chapter ASHRAE, First Edition-Centennial 1976, 1985 ASHRAE Fundamentals Handbook (See 2012 IPC appendix D).

Degrees North Latitude may be obtained at www.ncdc.noaa.gov

Resolutions 10, 34, 35, 36, and 38 repealed and replaced with this new rule, adopted on May 8, 2018, and effective July 1, 2018.

Rule 1.23 was created; Rules 1.24 and 1.25 were renumbered; Rules 2.1 and 2.1.1.1 were amended; Rules 2.2, 2.2.1, and 2.2.2 were amended; Rules 2.2.25, 2.2.26, and 2.2.27 were created; Rule 2.4 was amended; Rules 2.5 and 2.5.2 were amended; Rule 2.6 was amended; Rules 2.7.1, 2.7.4, and 2.7.7 were amended; Rule 4.1 was amended; Rule 4.21 was amended; Rule 4.23 was amended; and Rule 4.24 was amended. These changes were adopted on October 8, 2019, and are effective November 30, 2019.

Rule 7.3 was amended; Rule 7.5 was repealed and subsequent rules renumbered, and Rule 7.7 was created. These changes were adopted on July 14, 2020, and are effective September 14, 2020.

Rules 1.13, 7.1, and 7.2 were deleted. Rules 1.6, 1.9, 2.5.3., 5.8, 5.9, 6.11.1, 6.12.3, 6.15.1, 6.26(B), and 6.29.1 are new. Rules 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.11.1, 1.11.2, 1.12, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25. 1.26, 1.26.1, 1.26.2, 7.3, 7.4, 7.5, 7.6, and 7.7 were re-numbered. Rules 1.1, 1.4, 1.5.2, 1.9, 1.12.1, 1.15, 1.17, 1.18, 1.21, 1.25, 1.26.2(C), 2, 2.1.1.1, 2.5, 2.12, 3.1.3, 3.7, 4.1, 4.14, 4.15.1, 5, 5.1, 5.1.1, 5.1.2, 5.2, 5.3, 5.3(A), 5.3(B), 5.3(C), 5.4, 5.6, 6.1, 6.2, 6.2.1, 6.2.2, 6.3, 6.3.2, 6.5, 6.9, 6.10, 6.10.1, 6.11, 6.12, 6.12.1, 6.12.2, 6.13, 6.14, 6.14.1, 6.14.2, 6.15, 6.16, 6.26(A), 6.27, 6.28, 6.29, 7.1, 7.1.1, 7.1.2, and 7.5 were amended. These changes were adopted on July 13, 2021, and are effective August 30, 2021.

Title and subtitles changed to incorporate HB22-1242 modifications. Deleted Rules 2.5.1.1.(A). 7.7.2 Added Rules 1.4, 1.11, 1.19, 1.26, 1.31, 1.32, 1.33, 2.2.13, 3.1.6, 3.6.2(B), 3.6.2(C), 3.6.5(C), 3.6.5(D),

4.5, 4.5.1, 4.5.2, 4.5.2(1), 4.5.2(2), 4.6, 4.12.1, 4.12.2, 4.12.3, 4.12.4, 4.12.5, 4.12.6, 4.12.6.1, 4.15.1, 4.15.2, 4.15.3, 4.17.3, 4.17.4, 4.17.5, 4.24, 4.25, 4.27.5, 4.27.6, 5.2, 5.7, 5.12, 5.12.1, 6.1.2, 6.2.3, 7.1.2. Amended Rules: 1.2, 1.6.2, 1.6.3, 1.8, 1.10, 1.13, 1.13.1, 1.13.2, 1.15, 1.18, 1.20, 1.22, 1.27, 1.29, 2.1.9, 2.2.1, 2.2.11, 2.2.12, 2.2.17, 2.2.27, 2.12, 2.13.1.1, 2.14.1, 2.14.2, 2.14.2.1.1, 2.14.2.2, 3.1, 3.85, 4.2, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.14.1, 4.15, 4.16, 4.17.1.1, 4.17.2, 4.21, 4.22, 4.26, 4.26.1.1, 4.26.1.2, 4.26.1.3, 4.27.2, 4.27.3, 4.28, 4.32.1, 4.32.3, 4.32.4, 4.32.5, 4.32.8, 4.32.9, 5.1.1, 5.3, 5.4, 5.10, 6.1, 6.2, 6.2.1, 6.3, 6.3.1, 6.3.2, 6.4, 6.6, 6.7, 6.10, 6.11.1.1, 6.11.1.2, 6.12.1, 6.13, 6.25, 6.26, 6.30.1, 7.2, 7.5. The following rules were renumbered 1.4, 1.5, 1.6, 1.6.1, 1.8, 1.12, 1.13, 1.15, 1.20, 1.24, 1.26, 1.26.1, 1.26.2(A), 1.26.2(B), 1.25.2(C), 2.2.13, 2.2.14, 2.2.15, 2.2.16, 2.2.17, 2.2.18, 2.2.19, 2.2.20, 2.2.21, 2.2.22, 2.2.23, 2.2.24, 2.2.25, 2.2.26, 2.2.27C4.11.2, 4.14, 4.14.1, 4.15, 4.16, 4.16.1, 4.16.1.1, 4.17, 4.19.1, 4.20, 4.21.1, 4.21.3.1, 4.21.2.1, 4.21.2.2, 4.21.2.3, 4.21.2.3, 4.21.2.4, 4.21.3.1, 4.21.4, 4.22.1, 4.22.2, 4.22.3, 4.22.4, 4.22.4.1, 4.22.5, 4.23, 4.24, 4.24.1, 4.24.2, 4.24.3, 4.24.3.1, 4.25, 4.26, 4.27, 4.27.2, 4.27.6, 4.27.7, 4.27.10, 4.27.11, 4.27.11.1, 4.27.11.2, 5.4, 5.5, 5.6, 5.7, 5.9. These changes were adopted on 5/9/2023 and are effective 7/1/2023.

Notice of Proposed Rulemaking

Tracking number

2023-00759

Department

1400 - Department of Early Childhood

Agency

1401 - General Early Childhood Administration and Programs

CCR number

8 CCR 1401-1

Rule title

GENERAL EARLY CHILDHOOD RULES AND REGULATIONS

Rulemaking Hearing

Date

12/18/2023

Time

05:30 PM

Location

Webinar Only: https://us02web.zoom.us/meeting/register/tZEsceCurzkuH9JG28NfoErOC2jk2f9D2svg

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Executive Director to implement Colorado Senate Bill 23-217, and establish the fee amount the Colorado Department of Early Childhood (CDEC) will collect for Abuse and Neglect Background Checks; address concerns raised by the Office of Legislative Legal Services (OLLS) regarding Rule 1.306; and consider the adoption of permanent rules for the Nurse Home Visitor Program (NHVP) to implement Colorado House Bill 22-1295. The proposed rules for the NHVP currently exist within the Colorado Department of Human Services and are being transferred/re-adopted by CDEC, which also include new rule numbering; updates to departmental, statutory, and cross-rule references; and a general cleanup of grammar and rule language for clarity.

Statutory authority

Sections 26.5-1-105(1), 19-1-307(2.5), 26.5-3-504(3), 26.5-504(4), 26.5-3-306, 26.5-3-308, and 24-4-103, C.R.S.

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COLORADO DEPARTMENT OF EARLY CHILDHOOD

General Early Childhood Administration and Programs

GENERAL EARLY CHILDHOOD RULES AND REGULATIONS

8 CCR 1401-1

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

1.100 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1)(a), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 ~~*et seq.*~~through 24-4-204, (the "APA"), C.R.S.~~;~~ the Anna Jo Garcia Haynes Early Childhood Act, ~~sections 26.5-1-101 *et seq.*~~Title 26.5 of the C.R.S. ~~-~~(the "Early Childhood Act"), C.R.S.~~;~~ ~~and the~~ Colorado Nurse Home Visitor Program Act in sections 26.5-3-501 ~~, *et. seq.*~~through 26.5-3-508, C.R.S.; and the Child Protection Act of 1987, in sections 19-3-301 ~~, *et. seq.*~~through 19-3-317, C.R.S.

1.101 SCOPE AND PURPOSE

These rules and regulations shall govern the processes, procedures, and participation in the general administration of early childhood programs and services that are applicable across divisions within the Department; School Readiness Quality Improvement Program~~;~~ Early Childhood Councils~~;~~ and Nurse Home Visitor Programs in Colorado.

1.102 APPLICABILITY

The provisions of these rules and regulations shall be applicable to all services administered by the Department within the scope of its authority as granted in section 19-1-307(2)(i), (k)-(o), (t), and (y), C.R.S.,~~licensed childcare providers,~~ Early Childhood Councils, and Nurse Home Visitor Program providers regulated by the ~~Colorado~~ Department ~~of Early Childhood~~.

1.103 ABUSE AND NEGLECT BACKGROUND CHECK FEES

A. The Department shall assess a uniform fee for the purpose of conducting employment, volunteer, and substitute placement background screenings to determine if an individual has been confirmed in the state-wide information system, Colorado TRAILS system, as the person responsible in an incident of child abuse and/or neglect. The fee shall be established by the Department, and reviewed annually compliant with section 19-1-307(2.5), C.R.S., to ensure the fee does not exceed the direct and indirect costs of administering the services defined in sections 19-1-307(2)(i), (k)-(o), (t), and (y), C.R.S.

B. The fee established by the Department to conduct employment, volunteer, and substitute placement background screenings must be consistent with the annual appropriation level set by the General Assembly, and all fees collected will be paid into the Records and Reports Fund. The Department shall publicly post the amount of the abuse and neglect background check fee on its website and provide reasonable notice on the website prior to the fee changing.

C. The Department shall not set the fee above thirty dollars ($30), unless specifically approved by the Executive Director of the Department to fund an increase in the direct and indirect costs of administering the services defined in sections 19-1-307(2)(i), (k)-(o), (t), and (y), C.R.S. If an

increase in the fee amount is approved by the Executive Director of the Department, the Department will notify interested persons at least thirty (30) calendar days in advance on the Department's Public Notice Information webpage at: https://cdec.colorado.gov/public-notice-information, and the increase will be communicated by the Department.

D. If the Department anticipates a reduction in the fee amount in compliance with section 19-1-307(2.5), C.R.S., the Department shall provide notice on the Department's Public Notice Information webpage at: https://cdec.colorado.gov/public-notice-information, and the decrease will be communicated by the Department.

…

1.300 EARLY CHILDHOOD COUNCILS

…

1.306 STATE DEPARTMENT FUNDING REQUIREMENTS

This rule is promulgated pursuant to sections 26.5-2-204(5) and 26.5-2-207(2)(a), C.R.S.

A. To be eligible to receive infrastructure, quality improvement, technical assistance, and evaluation funding from the state department, an Early Childhood Council must:

…

2. Submit a strategic plan for compliance review in accordance with rule section 1.305(C)~~©~~ and (D).

B. Each Early Childhood Council seeking infrastructure, quality improvement, technical assistance, and evaluation funding shall submit an application to the state department that includes or describes:

…

7. The Council's strategic plan, in compliance with rule section 1.305(C)~~©~~ and (D).

…

~~Addition of Sections 7.800 through 7.823 were final adoption following publication at the 2/7/2014 State Board rule-making session, with an effective date of 4/1/2014 (Rule-making# 13-10-9-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration.~~

~~7.800 EARLY CHILDHOOD~~

1.400~~7.810~~ NURSE HOME VISITOR PROGRAM

1.401~~7.811~~ DEFINITIONS ~~[Eff. 4/1/14]~~

A. "Alternative Nurse Home Visitation Program" means a program that provides home visits by nurses but is not the program described in section 26.5-3-504(1)~~26-6.4-104(1)~~, C.R.S., but does

qualify for funding from the Nurse Home Visitor Program Fund because it meets the requirements of section 26.5-3-506~~26-6.4-104(4)~~, C.R.S., and rule section 1.410~~7.820~~ of these rules.

~~"Board" means the State Board of Human Services.~~

B. "Conflict of interest" means a personal or financial interest that could reasonably be perceived as an interest that may influence an individual in their~~his or her~~ official duties.

"D~~epartment" means the Colorado Department of~~ Hu~~man Services~~rlildh~~.~~

C. "Entity" means any nonprofit, not-for-profit, or for-profit corporation;~~,~~ religious or charitable organization;~~,~~ institution of higher education;~~,~~ visiting nurse association;~~,~~ existing visiting nurse program;~~,~~ county, district, or municipal public health agency; ~~l~~ocal health department, ~~c~~ounty department of human or social services;~~,~~ political subdivision of the state;~~,~~ or other governmental agency; or any combination thereof.

D. "Expansion site" means a program that is already serving at least fifty (50) low-income, first-time mothers, through a grant received under these rules, in the previous fiscal year, and the implementing entity is applying for additional funding to enable it to serve additional low-income, first-time mothers.

E. "Financial interest" means a substantial interest held by an individual which is an ownership or vested interest in an entity, or employment or a prospective employment for which negotiations have begun, or a directorship or officership in an entity.

F. "Health sciences facility" means the Anschutz medical campus or a successor~~a~~ facility located at the u~~U~~niversity of Colorado h~~H~~ealth ~~Sciences~~ sciences c~~C~~enter that is selected by the p~~P~~resident of the u~~U~~n~~i~~versity of Colorado pursuant to section 26.5-3-505, C.R.S., to assist the executive director in administering the program.

G. "Low-income" means an annual income that does not exceed two hundred percent (200%) of the federal poverty l~~evel~~ine.

H. "New entity" means any entity that has not previously received funding for the program pursuant to these rules.

I. "Nurse" means a person licensed as a professional nurse pursuant to part 1 of article 255 of Title 12, section 12-255~~-12-38-102, C.R.S., *et seq.*,~~ o~~r~~ accredited by anot~~h~~er state or voluntary agency that the S~~s~~tate b~~B~~oard of N~~n~~ursi~~n~~g has i~~d~~entified by rule (3 CCR 716-1) pursuant ~~to section~~ 255-107(1)(a)12-38-108(1)(a), C.R.S.~~, as one whose~~ accreditation may be accepted in lieu of board approval.

J. "Nurse Home Visitor Program" or "Program" means the nurse home visitor program established in part 5 of article 3 of Title 26.5, C.R.S.a ~~program that is described in section 6-504~~26-6.4-104(1), C.R.S., and meets the requirements of these rules.

K. “Nurse Home Visitor Program Fund” means the fund described in section 26.5-3-507(2)(c), C.R.S.

L. "Nurse supervisor" means a nurse with a Master's degree in nursing or public health, unless the implementing entity can demonstrate that such a person is either unavailable within the community or an appropriately qualified nurse without a Master's degree is available.

M. “State Department” means the Colorado Department of Early Childhood.

N. "Visit protocols" mean nurse home visit guidelines addressing, at a minimum, prenatal, infancy and toddler development.~~;~~ The visit protocols ~~and~~ must cover topics such as positive birth outcomes, parental life course development and parenting skills.

1.402~~7.812~~ PROCEDURES FOR GRANT APPLICATION

A. Grant Application Contents

1. All applications shall be submitted to the state ~~D~~department by entities as defined in rule section 1.401(D)~~7.811~~ in accordance with these rules and shall contain, at a minimum, the basic program elements specified in section 26.5-3-506(1)~~26-6.4-106~~, C.R.S., and the following information. A budget which includes each of the following:

   a. Salaries and benefits for the staff required in rule section 1.407~~7.817~~;

   b. Costs of the training provided by the ~~H~~health ~~S~~sciences ~~F~~facility, and costs to cover any other training required by the ~~H~~health ~~S~~sciences ~~F~~facility. Allowable costs include, but are not limited to, travel costs and training materials;

   c. Costs to purchase and maintain the management information system and related technical assistance;

   d. Operating costs, including, but not limited to, office and program supplies, postage, telephones, computer(s) with internet access, liability insurance, medical supplies, mileage reimbursement and other staff development for the required staff;

   e. A description of how the applicant will fund any additional costs not funded by the grant;

   f. Any in-kind contributions the applicant or other stakeholders in the community may donate.

2. Applications for New Entities

   In addition to the requirements of rule section 1.402(A)(1)~~7.812, A, 1, of these rules~~, applications for new entities shall contain, at a minimum, the following information:

   a. A description of the experience the applicant has working with the target population and existing home visitation programs;

   b. A description of the community support for the program and for the applicant as the lead organization in its implementation, including detailed information about the broad~~-~~-based support for the program's implementation. Breadth of community support shall be judged by the diversity of those involved in supporting the program's implementation, and can be evidenced through letters of support and more formal referral relationships among various community organizations and the applicant;

   c. A description of the specific needs of the population to be served including, but not limited to, the socio-demographic and health characteristics that justify the need for the program and the number of first-time, low-income mothers eligible for the program;

d. A description of the relationship of the applicant with the schools, prenatal clinics and other referral sources for the first-time, low-income mothers who will be served by the program, with specific information about the duration of these relationships;

e. A description of the nature and duration of the referral linkages that exist between the applicant and other service providers throughout the community including, but not limited to, providers of social services, mental health services, workforce preparation services, job training services, legal services, health care services and child care services;

f. Except as provided in rule section 1.4097.819, a description of a plan for recruiting at least one hundred (100) first-time, low-income mothers;

g. A description of the collaboration between the applicant and other entities providing similar services to the same population, including plans for coordination and a description of how the program will fit in with and complement the community's efforts to meet the needs of the target population, if applicable;

h. A plan for hiring and retaining qualified staff that represents the community's racial and cultural diversity;

i. A description of the applicant's capacity to comply with and monitor the implementation of the grant requirements;

j. Summary of the major strengths of the applicant and the community that will lead to successful implementation of the program; and,

k. A statement as to whether the applicant plans to work collaboratively with other entities in either administering the program or through an oversight board, and whether the other entities are other counties, municipalities, agencies, or organizations; and.

l. If an applicant currently provides services in compliance with rule sections 1.4067.816 through 1.4097.819, using funding other than from the Nurse Home Visitor Program Fund, the applicant shall state if:

1) The applicant expects to continue to receive funding from such alternative funding source; and,

2) Funds received pursuant to these rules will be used to increase the number of clients served.

3. Applications for Multiple Community Collaboration

If multiple communities with lower birth rates need to collaborate to meet the one hundred (100) -family requirement, the applicant shall provide specific plans that address the mechanisms and history of the collaboration in addition to complying with the requirements of rule sections 1.402(A)(1) and (2)7.812, 1 and 2. The plan shall include, but not be limited to, examples of previous collaborations.

4. Applications for Expansion Sites

In addition to complying with the requirements of rule section 1.402(A)(1)~~7.812, A, 1~~, each expansion site shall submit the following in its application:

a. Confirmation that the entity has implemented the program in compliance with these rules;

b. A description of additional community demand for the program that is not being met through the current funding;

c. A specific plan for building additional infrastructure to support the expansion of the program including, but not limited to, physical space, staff supervision, and computer data entry personnel;

d. A description of how the implementing entity has addressed previous specific challenges relating to the program;

e. A plan describing the implementing entity's strategy to recruit and train sufficient qualified nurses to implement and expand the program; and~~,~~

f. A description of community support for the planned expansion of the program.

B. Timelines for Grant Applications

Grant applications may be solicited up to two (2) times each fiscal year.

1.403~~7.813~~ REVIEW OF APPLICATIONS ~~[Eff. 4/1/14]~~

A. The state ~~D~~department shall conduct an initial technical review of submitted applications to ensure that all required components are included.

B. After the state d~~D~~epartment's technical review of the applications, the ~~H~~health ~~S~~sciences ~~F~~facility shall review the applications and shall select a list of entities that the h~~H~~ealth s~~S~~ciences ~~F~~facility recommends to administer the program in communities throughout the state.

C. The state ~~D~~department shall review the budget and budget justification in the application of each selected entity and provide technical assistance to ensure an accurate budget to support implementation in accordance with program requirements.

1.404~~7.814~~ CRITERIA FOR SELECTION OF ENTITIES ~~[Eff. 4/1/14]~~

A. At a minimum, the following criteria shall be used for selecting potential grantees:

1. The applicant meets the definition of an "entity" as defined in rule section 1.401(D)~~7.811~~;

2. The entity submits a completed application in accordance with~~,~~ the requirements of rule section 1.402~~7.812~~;

3. The entity demonstrates the capacity and ability to adequately administer and implement the program;

4. The entity demonstrates that it will comply with the requirements of rule sections 1.406~~7.816~~ through 1.408~~7.818~~;

5. The entity's geographic service area and/or the population it serves advances the implementation of the program in communities throughout the state; and~~,~~

6. The entity is selected on a competitive basis.

B. More than one (1) entity may receive funding in a particular community if it can demonstrate in its application:

1. Broad community support for the implementing entity;

2. Existence of a sufficient number of eligible women to support multiple implementing entities;

3. Existence of close coordination and mutual support between the entities; and~~,~~

4. A specific plan for the coordination by the applying entity and other nurse home visitation programs in the community.

C. Special consideration shall be given to entities that are proposing to administer the program as a collaborative effort among multiple entities.

1.405~~7.815~~ AWARDING OF PROGRAM GRANTS ~~[Eff. 4/1/14]~~

A. The Executive Director or Designee ~~State Board of Human Services~~ shall approve grants and award funding to the entities selected on a competitive basis by the ~~H~~health ~~S~~sciences ~~f~~Facility.

B. The grant awards may, at a minimum, include monies to fund:

1. Reasonable and necessary salaries and benefits for nurses, nurse supervisors, and data entry employees;

2. Reasonable and necessary operating costs, including but not limited to, medical, program and office supplies, telephones, computer equipment, mileage reimbursement, any required insurance, and staff development;

3. Reasonable and necessary training, training materials and travel costs associated with obtaining training required by rule section 1.406(A)~~7.816, A~~;

4. Reasonable and necessary cost for purchasing the management information system, and any related technical assistance; and~~,~~

5. Reasonable and necessary costs for developing any infrastructure necessary for program administration and implementation.

1.406~~7.816~~ PROGRAM REQUIREMENTS ~~[Eff. 4/1/14]~~

A. Training Requirements

Each nurse employed by an entity to provide nurse home visiting ~~nursing~~ services through the Nurse Home Visitor Program shall be required, at a minimum, to attend and complete the following training:

1. Preparatory study educating nurse home visitors on their nurse home visitor role and competencies, including:

a. Applying~~ies~~ theories and principles integral to implementation of the Nurse-Family Partnership Model. (2019), herein incorporated by reference. No later editions or amendments are incorporated. A copy of the principles are available

from the U.S. Department of Health and Human Services, Administration of Children & Families, at https://homvee.acf.hhs.gov/implementation/Nurse-Family%20Partnership%20(NFP)%C2%AE/Model%20Overview. A copy is also available from the State Department for inspection and copying at 710 S. Ash St., Bldg. C., Denver, CO 80246 during normal business hours.

b. Useings evidence from randomized trials and data collection software to guide and improve practice.

c. Deliverings individualized client care across the six (6) domains of Personal Health, Environmental Health, Life Course, Maternal Role, Friends and Family, and Health and Human Services.

d. Establishesing therapeutic relationships with clients.

e. Utilizinges reflective process to improve practice.

2. Interactive training where nurse home visitors receive instruction and assistance to begin applying information. This training Pprepares new nurses to implement the intervention with fidelity to the Nurse-Family Partnership Model.

3. Training to give nurses an opportunity to deepen their understanding of the Nurse-Family Partnership Model, specifically ~~in regards to~~regarding:

a. Infant temperament;

b. Motivational interviewing; and

c. Fidelity to the model elements.

B. Visit Protocols

The visit protocols followed by the entity in administering the program shall cover information specific to prenatal, infant, and toddler phases. The visit protocols shall, at a minimum, address:

1. The physical and emotional health of the mother and the baby, including ~~for the mother~~ information for the mother on the importance of nutrition and avoiding alcohol and drugs, including nicotine;

2. The environmental health issues such as ensuring a safe environment for the child;

3. The life course development for the mother, including employment, educational achievement, budgeting and financial planning, transportation and housing;

4. The parental role and responsibilities; and~~,~~

5. The role of family and friends in supporting goal attainment.

C. Program Management Information Systems

The management information system used by the entity in administering and implementing the program shall, at a minimum, include the following:

1. Documentation of the services received by clients enrolled in the program;

2. Information to assist the program staff in tracking the progress of families in attaining program goals;

3. Information to assist nurse supervisors in providing feedback to individual nurse home visitors on strengths and areas for improvement in implementing the program; and~~,~~

4. Information to assist program staff in planning quality improvements to enhance program implementation and outcomes.

D. Reporting and Evaluation System

1. At least once (1 time) every month, each implementing entity shall submit the data generated by the management information system required by rule section 1.406(C)~~7.816, C~~, to the ~~H~~health s~~S~~ciences ~~F~~facility.~~; and,~~

2. The data will be analyzed and the ~~H~~health ~~S~~sciences ~~F~~facility shall make available, on no less than a quarterly basis, a report to the entity evaluating the program's implementation, and on a semi-annual basis shall also make available reports on benchmarks of program outcomes.

3. The implementing entity shall submit an annual report that complies with the requirements in rule section 1.411~~7.821~~ to both the h~~H~~ealth ~~S~~sciences f~~F~~acility and the community in which the entity implements the program that reports on the effectiveness of the program within the community.

4. The annual report shall be submitted on or before March 1, or not later than sixty (60) days after the end of the fiscal year for which funding was provided if the program has not submitted a request for continuation of funding. The annual report shall be written in a manner that is understandable for both the h~~H~~ealth ~~S~~sciences ~~F~~facility and members of the community that the program serves.

1.407~~7.817~~ STAFFING REQUIREMENTS ~~[Eff. 4/1/14]~~

A. For every one hundred (100) low-income, first-time mothers enrolled in the program, the program shall, at a minimum, have the following staff:

1. Four (4) full time equivalent (FTE) nurses;

2. One (1) half FTE nurse supervisor, and~~,~~

3. One (1) ~~-~~half FTE data entry/clerical support person.

B. The data entry/clerical support person shall provide office support to the nursing staff and assure data are submitted as required by rule sections 1.406(C) and (D)~~7.816, C and D~~.

C. The caseload for any one (1) nurse at one (1) time shall not exceed twenty-five (25) low-income, first-time mothers.

1.408~~7.818~~ ELIGIBILITY OF CLIENTS ~~[Eff. 4/1/14]~~

A. At a minimum, the following is required to be eligible to receive program services:

1. A mother~~woman~~ with an annual income that does not exceed two hundred percent (200%) of the federal poverty ~~level~~line;

2. No previous live births; and~~,~~

3. Enrolled in the program during pregnancy or prior to the end of the first (1st) month of the baby's life.

B. Preference will be given to mothers~~women~~ who enroll in the program prior to the twenty-eighth (28th) week of pregnancy.

1.409~~7.819~~ NUMBER OF CLIENTS SERVED; WAIVER ~~[Eff. 4/1/14]~~

A. Except as provided in rule section 1.409(B)~~7.819, B~~, each entity shall provide services to a minimum of one hundred (100) low-income, first-time mothers in the community in which the program is administered and implemented.

B. Small Community Size:

1. If the population base of a community does not have the capacity to enroll one hundred (100) eligible families, an entity may apply to the state departmentB~~oard~~ for a waiver from this requirement.

2. Prior to granting any waivers, the state department~~Board~~ shall consult with the health sciences facility to ensure that the entity can implement the program within a smaller community and comply with program requirements.

1.410~~7.820~~ AVAILABILITY OF FUNDING FOR ALTERNATIVE NURSE HOME VISITATION PROGRAMS ~~[Eff. 4/1/14]~~

A. An alternative nurse home visitation program may qualify for funding under the nurse home visitor program, if the alternative nurse home visitation program:

1. Has been in operation in the state as of July 1, 1999, for a minimum of five (5) years;

2. Has achieved a significant reduction in each of the following:

a. Infant behavioral impairments due to use of alcohol and other drugs, including nicotine;

b. The number of reported incidents of child abuse and neglect among families receiving services;

c. The number of subsequent pregnancies by mothers receiving services;

d. The receipt of public assistance by mothers receiving services; and~~,~~

e. Criminal activity engaged in by mothers receiving services and their children.

B. Any alternative nurse home visitation program qualifying for funding under this section shall be exempt from the requirements of rule section 1.406~~7.816,~~ if it continues to demonstrate significant reductions in the occurrences specified in rule section 1.410(A)(2)~~7.820, A, 2~~.

C. Any alternative nurse home visitation program qualifying for funding under this section shall comply with the requirements of rule section 1.411~~7.821 of these rules~~.

1.411~~7.821~~ REPORTING REQUIREMENTS FOR TOBACCO SETTLEMENT PROGRAMS

A. All programs shall annually submit to the state ~~D~~department a report which, at a minimum, includes the following information:

1. The amount of ~~tobacco~~ master settlement agreement moneys, as described in section 26.5-3-503(4), C.R.S., 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.~~

1.412~~7.822~~ CONFLICTS OF INTEREST ~~[Eff. 4/1/14]~~

A. Applicability

Except as provided for in sections 26.5-3-505 ~~26-6.4-105, C.R.S.~~ through 26.5-3-508~~26-6.4-108~~, C.R.S., regarding the ~~H~~health ~~S~~sciences ~~F~~facility, this section applies to any person involved in:

1. The review of completed applications; or~~,~~

2. Making recommendations to the ~~Board~~ state department regarding an entity that may receive a grant and the amount of said grant.~~; or,~~

~~3. Members of the Board.~~

B. Prohibited Behavior

No person who is involved in the activities specified in rule section 1.412(A)~~7.822, A~~, shall have a conflict of interest. Such conflict of interest includes, but is not limited to, any conflict of interest involving the person and the grantee, or the person and the tobacco industry.

C. Responsibilities of Persons with a Potential Conflict of Interest

A person who believes that they~~he or she~~ may have a conflict of interest must~~shall~~ disclose such conflict of interest as soon as ~~he or she~~they become~~s~~ aware of the conflict of interest.~~ If the person is a member of the Board and acting in the capacity as a Board member, the person shall publicly disclose the conflict of interest to the Board; other persons~~ and~~ shall disclose the conflict of interest in writing to the state d~~D~~epartment. If the ~~Board or the~~ state ~~D~~department~~, whichever is appropriate,~~ determines the existence of a conflict of interest, the person must~~shall~~ recuse themselves ~~himself or herself~~ from any of the activities specified in rule section 1.412(A)~~7.822, A~~, relating thereto.

1.413~~7.823~~ CRITERIA FOR REDUCTION OR CESSATION OF FUNDING ~~[Eff. 4/1/14]~~

A. Upon recommendation from the h~~H~~ealth ~~S~~sciences f~~F~~acility, the state department~~Board~~ may reduce or eliminate the funding of a program if the entity is not operating the program in accordance with the program requirements established in rule sections 1.4067~~.816~~ through 1.4087~~.818,~~ except as provided in rule section 1.4107~~.820 of these rules~~, or is operating the program in such a manner that it does not demonstrate positive results.

B. An entity shall receive written notification from the state departmentB~~oard~~ if the entity's funding is subject to reduction or elimination.

C. Any reduction or elimination in funding is subject to the due process requirements outlined in section 24-4-105, C.R.S.

Editor's Notes

History

New rules 1.100-1.307 eff. 07/15/2023.

New rules 1.103 and 1.400-1.413 eff. 03/01/2024.

COLORADO
Department of Early Childhood

Rule Author/Division Director: Elena Kemp (Lisa Castiglia / Carin Rosa)	Email(s): CDEC_Rulemaking@state.co.us
Program/Division: Department-Wide	CDEC Tracking No.: 2023-09-017
CCR Number(s): 8 CCR 1401-1	SOS Tracking No.: TBD

RULEMAKING PACKET

Reason and Justification of the proposed rule or amendment(s):	Compliance with Federal and/or State laws, mandates, or guidelines If there are "Multiple/Other" reasons, please explain:
Provide a description of the proposed rule or amendment(s) that is clearly and simply stated, and what CDEC intends to accomplish:	The purpose of these proposed new rules are to implement Colorado Senate Bill 23-217, and establish the fee amount the Colorado Department of Early Childhood (CDEC) will collect for Abuse and Neglect Background Checks.
Statutory Authority: (Include Federal Authority, if applicable)	Sections 26.5-1-105(1), 19-1-307(2.5), and 24-4-103, C.R.S.
Does the proposed rule or amendment(s) impact other State Agencies or Tribal Communities?	☐ Yes ☑ No If Yes, identify the State Agency and/or Tribal Community and describe collaboration efforts:
Does the proposed rule or amendment(s) have impacts or create mandates on counties or other governmental entities? (e.g., budgetary requirements or administrative burdens)	☐ Yes ☑ No If Yes, provide description:
Effective Date(s) of proposed rule or amendment(s): (Emergency/Permanent)	☐ Mandatory ☑ Discretionary (E) Effective Date: N/A (P) Effective Date: 3/1/24 (E) Termination Date: N/A

Is the proposed rule or amendment(s) included on the Regulatory Agenda?	☑ Yes ☐ No If no, please explain:
Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?	☐ Yes ☑ No If Yes, please explain:
Does the proposed rule or amendment(s) create duplication or overlapping of other rules or regulations?	☐ Yes ☑ No If Yes, explain why:
Does the proposed rule or amendment(s) include material that is incorporated by reference[1]?	☐ Yes ☑ No If Yes, provide source:
Does the proposed rule or amendment(s) align with the department's rulemaking objectives? Choose all that apply.	

☐	Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services.
☐	Decrease duplication and conflicts with implementing programs and providing services.
☐	Increase equity in access and outcomes to programs and services for children and families.
☑	Increase administrative efficiencies among programs and services provided by the department.
☑	Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.

[1] Incorporation by Reference is all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, pursuant to section 24-4-103(12.5), C.R.S.

Rulemaking Proceedings

Type of Rulemaking: Emergency or Permanent[2] [Permanent Tier I or Tier II]	Permanent Tier II
Stakeholder Engagement: Public Folder: Proposed rule, webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests, surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	List of activities and dates: The draft rules were emailed to stakeholders and posted on the CDEC Public Notices webpage, to solicit stakeholder feedback from 10/17/23 - 10/25/23. Public folder containing all rulemaking material: https://drive.google.com/drive/folders/1FPSLLVmtUYBZT3-za3YTDIYoTuErqX7M
Assistant Attorney General Review:	11/1/23 - 11/29/23
RAC County Subcommittee Review Date (if required):	12/7/23
Rules Advisory Council (RAC) Review Date:	12/14/23
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	12/29/23 (Adoption)

[2] Tier I is used for proposed rule or amendment(s) that have substantive changes, require substantial stakeholder engagement, and will be considered at two Public Rulemaking Hearings (PRH). The first PRH is held for discussion, and the second PRH is held to consider adoption. Tier II is used for proposed rule or amendment(s) that include technical changes, do not require substantial stakeholder engagement, and will be considered at only one Public Rulemaking Hearing (PRH) for adoption.

Regulatory and Cost Benefit Analysis

1. **Community Impact: Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations, such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?**

   All professionals working within the early childhood have the potential to be impacted by these proposed rules. The fees for "Abuse and Neglect" background check fees is an existing service fee that is being reduced as these functions are transferred from the Colorado Department of Human Services to the Colorado Department of Early Childhood. The early childhood professionals both bear the costs of implementing this proposed rule, as they are responsible for paying the background check fees, but also benefit from the reduction of the fee amount collected.

2. **Quality and Quantity: Provide a description of the probable quantitative and qualitative impact on persons affected by the proposed rule or amendment(s), and comparison of the probable costs and benefits of implementation versus inaction. What are the short- and long-term consequences of the proposed rule or amendment(s).**

   The background check fee reduction is monetarily beneficial for early childhood professionals that are either required or voluntarily conduct screenings for abuse and neglect cases. There is no comparison data regarding implementation and inaction, because the development of this rule is a statutory requirement outlined in section 19-1-307(2.5), C.R.S., (SB23-217).

3. **Potential Economic Benefits/Disadvantages: What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?**

   The reduced abuse and neglect background check fees potentially supports economic stability.

4. **Fiscal Impacts: What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate "not applicable."**

Department	The abuse and neglect background check fees are existing fees that are being reduced as this function is transferred into the new Department. There are no changes to the direct or indirect costs to the Department.
Local Governments/ Counties	There are no changes to the direct or indirect costs to the local governments or counties, beyond a reduction of abuse and neglect background check fees.

Providers	There are no changes to the direct or indirect costs to providers, beyond a reduction of abuse and neglect background check fees.
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	There are no changes to the direct or indirect costs to community partners, beyond a reduction of abuse and neglect background check fees.
Other State Agencies	There are no impacts on other state agencies.
Tribal Communities	There are no impacts on Tribal Communities.

5. <u>Evaluation</u>: How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

The Department will be able to evaluate the implementation of this rule through data collected on how many abuse and neglect background checks were collected, however, that data may be inconclusive because there are many variables that impact the overall total.

6. <u>Comparative Analysis</u>: Provide at least two alternatives to the proposed rule or amendment(s) that can be identified, including the costs and benefits of pursuing each of the alternatives.

There are no other alternatives to implementing this rule, as this rule is required pursuant to section section 19-1-307(2.5), C.R.S.

7. <u>Comparative Analysis</u>: Are there less costly or less intrusive methods for achieving the purpose of the proposed rule or amendment(s)? Explain why those options were rejected.

There are no less costly or less intrusive methods identified for establishing and reducing the abuse and neglect background check fee amounts.

COLORADO
Department of Early Childhood

Rule Author/Division Director: Joyce Johnson and Aaron Miller / Kendra Dunn	Email(s):joyce.johnson@state.co.us, aaronc.miller@state.co.us, kendra.dunn@state.co.us
Program/Division: NHVP/DCFS	CDEC Tracking No.: 2023-08-016
CCR Number(s): 8-CCR-1401-1	SOS Tracking No.:

RULEMAKING PACKET

Reason and Justification of the proposed rule or amendment(s):	Multiple/Other The purpose of this rulemaking is to transfer/re-adopt the NHVP rules from the Colorado Department of Human Services (CDHS) to the Colorado Department of Early Childhood (CDEC).
Provide a description of the proposed rule or amendment(s) that is clearly and simply stated, and what CDEC intends to accomplish:	The Nurse Home Visitor Program (NHVP) serves first-time, low-income pregnant mothers. It provides trained visiting nurses to help educate mothers on the importance of nutrition and avoiding alcohol and drugs, including nicotine, and to assist and educate mothers in providing general care for their children and in improving health outcomes for their children. Previously, NHVP was overseen by the Office of Early Childhood within the Colorado Department of Human Services. Section 26.5-3-504, C.R.S., directs the Department to promulgate rules to implement the program. The current proposed revisions to the NHVP's rules offer technical fixes to statute that include correcting references to the Colorado Department of Early Childhood; updating statutory and cross-rule references; updating rule numbering; and providing a general cleanup of grammar and rule language, where needed.
Statutory Authority: (Include Federal Authority, if applicable)	Sections 26.5-3-504(3), 26.5-504(4), 26.5-3-306, and 26.5-3-308, C.R.S.
Does the proposed rule or amendment(s) impact other State Agencies or Tribal Communities?	☑ Yes ☐ No If Yes, identify the State Agency and/or Tribal Community and describe collaboration efforts: The University of Colorado is statutorily required to be responsible for programmatic monitoring for the Nurse Home Visitor Program (NHVP). In addition to the public notices, staff at the University were contacted directly about this notice of rulemaking.
Does the proposed rule or amendment(s) have impacts or create mandates on counties or other governmental entities?	☐ Yes ☑ No If Yes, provide description:

(e.g., budgetary requirements or administrative burdens)	
Effective Date(s) of proposed rule or amendment(s): (Emergency/Permanent)	☐ Mandatory ☑ Discretionary (E) Effective Date: (P) Effective Date: 3/1/24 (E) Termination Date:
Is the proposed rule or amendment(s) included on the Regulatory Agenda?	☑ Yes ☐ No If no, please explain:
Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?	☐ Yes ☑ No If Yes, please explain:
Does the proposed rule or amendment(s) create duplication or overlapping of other rules or regulations?	☐ Yes ☑ No If Yes, explain why:
Does the proposed rule or amendment(s) include material that is incorporated by reference[1]?	☐ Yes ☑ No If Yes, provide source:
Does the proposed rule or amendment(s) align with the department's rulemaking objectives? Choose all that apply.	☐ Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services. ☑ Decrease duplication and conflicts with implementing programs and providing services. ☐ Increase equity in access and outcomes to programs and services for children and families. ☐ Increase administrative efficiencies among programs and services provided by the department. ☑ Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.

[1] Incorporation by Reference is all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, pursuant to section 24-4-103(12.5), C.R.S.

Rulemaking Proceedings

Type of Rulemaking: Emergency or Permanent[2] [Permanent Tier I or Tier II]	Permanent Tier I
Stakeholder Engagement and Data/Research: Examples: Webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests, surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	List of activities and dates: Two virtual stakeholder input sessions have been scheduled to occur on September 14 & 15, 2023. Additionally, notification has been sent to stakeholders via email, including a link to submit written comments. Notice of the rule package being open for public comment has been posted on the Public Notices tab of the CDEC website, and has also added to the CDEC Rule Tracker. Location of public folder containing all rulemaking material including all versions of the draft rules, written comments, webinar recordings: https://drive.google.com/drive/folders/1lWSya9Yb4li5cd0nJDVAEcMpzLd7FBaw
Assistant Attorney General Review:	9/22/2023 - 10/25/23
RAC County Subcommittee Review Date (if required):	11/2/23
Rules Advisory Council (RAC) Review Date:	11/9/23
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	11/17/23 (Discussion) 12/29/23 (Adoption)

[2] Tier I is used for proposed rule or amendment(s) that have substantive changes, require substantial stakeholder engagement, and will be considered at two Public Rulemaking Hearings (PRH). The first PRH is held for discussion, and the second PRH is held to consider adoption. Tier II is used for proposed rule or amendment(s) that include technical changes, do not require substantial stakeholder engagement, and will be considered at only one Public Rulemaking Hearing (PRH) for adoption.

Regulatory and Cost Benefit Analysis

1. **Community Impact: Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations, such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?**

   The stakeholders for our proposed rule amendment would include the University of Colorado who is statutorily responsible for programmatic monitoring for the NHVP, as well as Invest in Kids, who provide continuing education for the nurse home visitors and monitor fidelity to the model. Other stakeholders would include sites implementing the NHVP in Colorado. This rule amendment is a transfer/re-adoption of NHVP rule from CDHS to CDEC, and therefore does not have associated costs, and does not change any ways in which the program is administered. The Nurse Home Visitor Program will continue to serve low-income families pregnant with their first child under the Colorado Department of Early Childhood instead of the Colorado Department of Human Services.

2. **Quality and Quantity: Provide a description of the probable quantitative and qualitative impact on persons affected by the proposed rule or amendment(s), and comparison of the probable costs and benefits of implementation versus inaction. What are the short- and long-term consequences of the proposed rule or amendment(s).**

   Since the purpose of this rulemaking is to transfer/re-adopt the rule under the Colorado Department of Early Childhood, there should not be any impact to persons affected (stakeholders or families participating in the NHVP), and there are no associated costs to any party. The short and long term consequences of the proposed rulemaking is that the program and implementation will both be overseen by the Colorado Department of Early Childhood.

3. **Potential Economic Benefits/Disadvantages: What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?**

   The program will continue to operate as it has its creation in FY 2000, but it will be housed under the Colorado Department of Early Childhood instead of the Colorado Department of Human Services. The transfer of this rule is not expected to have any economic impact.

4. **Fiscal Impacts: What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate "not applicable."**

Department	The responsibility of the fiscal oversight of the NHVP now resides with CDEC instead of CDHS. This rulemaking will not have any additional financial impact on the program beyond the annual cost of implementing the program. Costs of implementing the program are primarily related to personnel and departmental infrastructure.
Local Governments/ Counties	N/A

Providers	N/A
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	N/A
Other State Agencies	As referenced above, CDHS no longer has financial oversight of the NHVP. Fiscal administration responsibilities now belong to CDEC.
Tribal Communities	N/A

5. Evaluation: How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

Stakeholders have been notified of the rule transfer/re-adoption via email. They have been given opportunities to provide feedback and may do so by attending either of the two stakeholder meetings, or submitting written comments through a form, which were all linked in the email notification.

6. Comparative Analysis: Provide at least two alternatives to the proposed rule or amendment(s) that can be identified, including the costs and benefits of pursuing each of the alternatives.

Since this is a transfer/re-adoption of existing rule, there are no alternative options. The rule is moving under the CDEC where the NHVP now resides.

7. Comparative Analysis: Are there less costly or less intrusive methods for achieving the purpose of the proposed rule or amendment(s)? Explain why those options were rejected.

The rule transfer/re-adoption does not have any associated costs.

Notice of Proposed Rulemaking

Tracking number

2023-00761

Department

1400 - Department of Early Childhood

Agency

1402 - Child Care Program Licensing

CCR number

8 CCR 1402-1

Rule title

CHILD CARE FACILITY LICENSING RULES AND REGULATIONS

Rulemaking Hearing

Date

12/18/2023

Time

05:30 PM

Location

Webinar Only: https://us02web.zoom.us/meeting/register/tZEsceCurzkuH9JG28NfoErOC2jk2f9D2svg

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Executive Director to consider adopting permanent rules for Neighborhood Youth Organizations (NYO) and Family Child Care Homes (FCCH), to implement Colorado House Bill 22-1295. The NYO and FCCH rules currently exist within the Colorado Department of Human Services, and are being transferred/re-adopted by Colorado Department of Early Childhood (CDEC). The revisions proposed by CDEC to the NYO and FCCH rules include new rule numbering; updates to departmental, statutory, and cross-rule references; a general cleanup of grammar and rule language for clarity; and multiple substantive changes identified during the mandatory rule reviews recently conducted for these programs.

Statutory authority

Sections 26.5-1-105(1), 26.5-5-311(1)(a), 26.5-5-313(4), 26.5-5-314(1) and (6), 26.5-5-316(1)(a)(I)(E), 26.5-5-316(1)(b)(II), 26.5-5-328(3)(b), and 24-4-103, C.R.S.

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COLORADO DEPARTMENT OF EARLY CHILDHOOD~~HUMAN SERVICES~~

Division of Early Learning, Licensing, and Administration ~~Social Services Rules~~

CHILD CARE FACILITY LICENSING RULES AND REGULATIONS

8 CCR 1402-1~~12 CCR 2509-8~~

…

2.300 ~~7.707~~ RULES REGULATING FAMILY CHILD CARE HOMES

~~All family child care homes must comply with the "General Rules for Child Care Facilities", "Rules Regulating Special Activities", and the "Rules Regulating Family Child Care Homes."~~

2.301 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in sections 26.5-1-105(1), 26.5-3-702(1)(d), and 26.5-5-314(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 ~~et seq.~~through 24-4-204 (the "APA"), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, ~~sections 26.5-1-101 et seq.~~Title 26.5 of the C.R.S. (the "Early Childhood Act")~~, C.R.S.~~, the Child Care Licensing Act, sections 26.5-5-301 ~~, et seq.~~through 26.5-5-329, C.R.S.; and the Child Care Development and Block Grant Act of 2014, 42 U.S.C. sec. 9858e

2.302 SCOPE AND PURPOSE

The Colorado Department of Early Childhood, Division of Early Learning, Licensing, and Administration is responsible for the administration of health and safety rules and requirements for licensed child care facilities. These rules outline the requirements for family child care homes operating less than twenty-four (24) hours, and govern the health and safety requirements for licensed family child care home providers in Colorado. All primary ~~family child care home~~ providers must comply with the "General Rules for Child Care Facilities" in rule section 2.100, "Rules Regulating Family Child Care Homes" in this rule section 2.300, and the "Rules Regulating Special Activities" in rule section 2.600.

2.303 APPLICABILITY

The provisions of these rules and regulations shall be applicable to facilities for child care operated with or without compensation or educational purposes in a place of residence of a family or person, for the purpose of providing less than twenty-four (24) hour care for children under the age of eighteen (18) years who are not related to the head of such home.

~~7.707.1 (None)~~

2.304~~7.707.2~~ DEFINITIONS ~~AND TYPES OF FAMILY CHILD CARE HOMES~~

A.~~7.707.21~~ Definitions for family child care homes

1. "AAP" means the American Academy of Pediatrics.

2. "ASTM" means the American Society for Testing and Materials. ASTM is an organization that coordinates the development of voluntary industry standards that supplement mandatory standards such as information to the public on Standard Consumer Safety Specification on Toy Safety (ASTM F-963) and other voluntary standards that cover specific children's products.

3. "Accessible" means children being able to obtain equipment and materials without adult aid, may be age/development specific.

~~"Age of child(ren) in child care" means any child(ren) that will count towards provider's license capacity, is between the age of birth to eighteen years of age, is in care for supervision in the parent(s) absence for a part or the whole of any day, and is not the provider's own child(ren).~~

~~"Age of provider's own child(ren) that counts towards license capacity" means any birth, adopted, step or foster child(ren) of a provider whose age ranges from birth to twelve years of age.~~

4. "Approved sleeping equipment" means equipment that is appropriate for the age of the child, is intended for sleep or rest, and allows the child freedom of movement in a safe and sanitary manner.

5. "Applicant 2" means an individual that resides in the family child care home and provides care regularly, in a recurring pattern. An Applicant 2 ~~and~~ must have the same required training as the Primary Provider as specified in these "Rules Regulating Family Child Care Homes." Applicant 2 is legally liable for the business.

6. "Available" means materials or equipment that is not immediately accessible to children, but which may be introduced with adult aid.

7. "Blocked telephone" means a telephone that will not accept telephone calls when caller ID says "unavailable." ~~.~~ This does not include telephones that require the caller to enter a ten digit telephone number from the telephone that is being called from or require the provider to have their name listed in a telephone directory.

8. "Child Care Health Consultant (CCHC)" means a medical professional who assists the program in meeting and exceeding basic health and safety standards. A child care health consultant must meet one of the following qualifications: a Licensed Registered Nurse with knowledge and experience in maternal and child health; a Pediatric Nurse Practitioner; a Family Nurse Practitioner; or, a Physician with knowledge and experience in pediatrics or maternal and child health.

9. "Choking hazard" means an item that presents the possibility of restriction or elimination of airflow into the lungs.

10. "CPR training" means cardiopulmonary resuscitation for adult, infant, and child.

11. "Clean" means to be free of visible dirt and debris or to remove dirt and debris by vacuuming or scrubbing and washing with soap and water.

12. "Complaint severity level" means the level of seriousness (zero to five) the ~~State~~ Department assigns to a complaint reported against a family child care home based on the severity of the allegation(s). The severity level assigned determines the timeframe in which the allegation(s) must be investigated by the licensing specialist.

13. "Compromise" means to expose to possible loss or danger.

14. "Culturally sensitive" means to encourage, share and explore the differences and similarities of heritage, and culture, language, race, and its effect on learning, values, and behavior.

15. "Corrective custodial or controlling speech" means using speech to direct or influence authority over a child(ren) by the use of directive speech to change a behavior.

16. "Danger" means exposure to harm or injury.

17. "Decorative pond" means a small- or medium-sized n artificially confined body of water which is usually smaller than a lake. The pond can be decorated with large and small rocks, water lilies, pond plants, tadpole, fish, and have features such as lights, waterfalls and fast moving water.

18. "Department" means the Colorado Department of Early Childhood.

19. "Derogatory" means to belittle, diminish, and express criticism or a low opinion of.

20. "Developmentally appropriate" means to provide an environment where learning experiences are meaningful, relevant, and are based upon a child's individually identified strengths and weaknesses, interests, cultural background, family history and structure.

21. "Director" means an individual that has been evaluated and received a written letter that verifies that he/she meets the Colorado State Director qualification requirements for a large child care center.

22. "Discipline" means to punish in order to bring a child's behavior under control.

23. "Disinfect" means to eliminate most or all pathogenic microorganisms, with the exception of bacterial spores by using effective bactericidal heat or concentration of chemicals which are germs from inanimate surfaces through the use of chemicals (e.g., products registered with the U.S. Environmental Protection Agency as "disinfectant") or a solution of household liquid chlorine bleach and water. This is generally accomplished in a child care setting by the use of liquid chemical solutions such as a mixture of household bleach and water.

24. "Early Childhood Mental Health Consultant" (ECMHC) means the same as "mental health consultant" in section 26.5-3-701(1), C.R.S. ECMHCs a consultant who provides culturally sensitive and primarily indirect services for children, birth through six years of age in group care and early education settings.

25. "Early Childhood Mental Health Consultation services" means the provision of services that promote social and emotional development in children and transform children's challenging behaviors. This includes capacity building for providers and family members; directly observing and interacting with children and the care giving environment; and, designing and modeling interventions that involve changes in the behaviors of family members and caregivers. It also includes collaboration with providers, employees, volunteers, and family members and caregivers who intervene directly with children in group care, early education and/or home settings.

26. "EQ I/TEQIT" means the Department approved Expanding Quality in Infant Toddler (EQIT) Care Course Infant/Toddler training for child care providers.

27. "Emergency" means a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action or a personal or family situation that is critical in nature, which

requires the provider to take immediate action and leave the home to handle the emergency.

27. "Emergency or urgent situation" means a personal or family situation that is critical in nature, which requires the provider to take immediate action; and leave the home to handle the emergency or urgent situation.

28. "Emergency Substitute" means an individual that is responsible for supervising children in the event of an emergency.29. "Employee" means paid or unpaid individual that cares for or assists with the care of children or any individual that is allowed unsupervised access to children.

29. "Equally qualified provider" means anthat the employee or substitute provider that has the same required trainings and qualifications as the primary provider as specified in these "Rules Regulating Family Child Care Homes."

30. "Extreme weather" means weather conditions that require unusual or immediate action to reduce exposure to harm or injury.

31. A "Family Child Care Home" (FCCH) has the same meaning as set forth in section 26.5-5-303(7), C.R.S is a type of family care home that provides less than twenty-four (24) hour care at any time for two (2) or more children that are unrelated to each other or the provider, and are cared for in the provider's place of residence.

32. "Field trip" is a trip by children away from the family child care home. These trips range from a few minutes during the day to a full day periodically throughout the year. Field trips are not intended to replace the regular indoor learning environment.

33. "Fire drill" means a drill in which the occupants of a building evacuate from the interior to the exterior of the building. Varying exits are used to know multiple ways out of a building in an emergency.

34. "First Aid training" means training in which a person reacts to injuries and performs simple emergency medical care procedures before emergency medical professionals are available as necessary.

35. "Flexibility" means the provider has the ready capability to adapt to new, different, or changing requirements of parent(s) or guardian(s) for child care.

36. "Frequently" means to occur often; many times and at short intervals.

"Gentle physical holding" means to carefully hold a child with the arms, without force.

37. "Guidance" means a way of teaching that empowers children to make decisions that are ethical, intelligent, and socially responsible.

38. "Guidance approach" means the use of guidance, distinct from discipline, to reduce the need for and resolve the occurrence of mistaken behavior in ways that are non-punitive.

39. "Harsh treatment" means treatment that is ungentle and unpleasant in action or effect,; such as treatment that is unpleasantly severe,; stern,; or cruel.

40. "Health Care Plan" means the document contains written instructions about a specific health condition including the when and how specific interventions are to be carried out in a school or child care setting. This document should be signed by the child's health care

provider and parent. Health Care Plans can be collaboratively created by the a Department-approved child care health consultant, the child's parents, health care provider and center staffprimary care provider. Health Care Plans, and are necessary for the care of children with chronic health care conditions such as asthma, seizure disorder, diabetes, or severe allergy. Health Care Plans may also guide the care of children with acute conditions that may need short-term special management in the group care setting such as a child returning to care with a cast, or after a surgical intervention.

41. "Health care provider professional" means a Licensed Physician, Physician's Assistant, and Nurse Practitioner registered or licensed with the Colorado Department of Regulatory Agencies' Division of Professions and Occupations. an organization or person who delivers proper health care in a systematic way professionally to any individual in need of health care services.

42. "Health care provider's scope of practice" means the boundaries and rules within which a fully qualified medical practitioner, with substantial and appropriate training, knowledge, and experience, may practice in a field of medicine or other specifically defined field. Such practice is governed by requirements for professional accountability.

423. "Home remedy" means a non-medical treatment to attempt to cure or treat an ailment with common household items or foods.

434. "If applicable" means if the rule should be applied depending on the circumstances of the situation.

445. "Immediately" means without delay or hesitation, without any interval of time.

456. "Inaccessible" means a child cannot reach, touch, or obtain the item.

467. "Infestation" means the presence of unwanted pests such as insects, rodents, bats, birds, or parasites at levels considered to pose either an economic or health threat.

478. "Interactive learning" means a method of learning through hands on activities that help a child gain knowledge and skills by connecting with information and experiences provided by the provider.

489. "Intoxicated" means that a person is under the influence of drugs or alcohol to the point that his/her actions and/or behavior presents an immediate danger to themselfher/himself or others.

4950. "Language development materials" means materials that focus on the development of listening and speaking skills, and contains experiences which familiarize children with pre-reading and pre-writing activities.

51.50 "Lead poisoning" means poisoning by a toxic metal that is found in and around homes, in lead-based paint, chipping paint, or lead dust from deteriorated paint. Lead may cause a range of health effects, from behavior problems and learning disabilities, to seizures and death.

52. "Legal signature" means the parent's full signature that includes both the first and last name.

512. "Lockdown drill" means a drill in which the occupants of a building are restricted to the interior of the building and the building is secured.

523. "Lost child" means a child that has been separated from the group outside of the supervision of the provider or assigned staff member or for whom the local authorities have been contacted the provider is unable to find the child. The child is no longer in the care or supervision of the provider.

534. "Mental Health Practitioner" means a mental health professional who offers services for the purpose of improving an individual's mental health or to treat mental illness.

545. "Nationally recognized" means to be known in the majority of businesses or residential areas of the United States and that may meet local or national accreditation standards.

556. "Negative licensing action" or "adverse action," has the same meaning as set forth in section 26.5-5-303(16), C.R.S., Adverse or Negative licensing action" also known as adverse action, means a final agency action resulting in the denial of an application, the imposition of fines, or the suspension or revocation of a license issued pursuant to the Child Care Licensing Act or the demotion of such a license to a probationary license.

567. "Offered" means materials, equipment or activities, including meals which are presented as options to children but are not required or forced upon children.

59. "On occasion" means from time to time;, a special event or ceremony,; or irregularly.

57. "Operational status information" means if the family child care home is open, closed, or temporarily closed.

5858. "Organic materials" means materials relating to, or derived from, living organisms.

5959. "Pattern" means repeating an activity such as a sleep or meal routine three or more times at regular intervals.

"Pedodontist" means a pediatric dentist, specializing in children from birth to four years of age.

600. "Periodically" means from time to time; a special event; an ongoing event or activity that occurs irregularly without an established pattern.

611. "Permanent climbing equipment" means climbing equipment installed that is stable, cannot be overturned or displaced, and cannot be moved or relocated to another area without assistance.

622. "Physical restraint" means the use of bodily, physical force to involuntarily limit an individual's freedom of movement; except that physical restraint does not include the holding of a child by one adult for the purposes of calming or comforting the child.

633. "Place of residence" means the place or abode where a person actually lives and provides child care on a regular, ongoing basis.

644. "Potential threat" means the possible exposure to harm or injury.

655. "Prescriptive authority" means the legal right of a medical person to prescribe medications under Colorado law.

66. "Protective equipment" means the use of protective head, knee, elbow and ankle equipment to protect a child riding on a scooter, bicycle, balance bike, skateboard, or rollerblades.

67. "Promptly" means without delay: very quickly or immediately.

68. "Primary provider" means the person that resides in the home and provides direct care, supervision and education to child(ren) in care at least sixty percent (60%) of the daily hours of operation of the family child care home.

69. "Psittacine birds", means all birds commonly known as parrots, cockatoos, cockatiels, macaws, parakeets, lovebirds, lories or lorikeets, and other birds of the order psittaciformesPsittaciformes. These birds may also be called or referred to as hookbills because the upper beak is turned downward.

70. "Punished" means to impose a penalty on a person. The causes for punishment may be for a behavioral fault, offense, or violation.

71. "Qualified Substitute" means a substitute provider that has all required trainings and qualifications as specified in these "Rules Regulating Family Child Care Homes."

72. "Regionally accredited" means colleges and universities which earn regional accreditation status by meeting acceptable levels of quality and performance. The accrediting bodies for higher education are Middle States Association of Colleges and Schools, Northwest Association of Colleges and Schools, North Central Association of College and Schools, New England Association of Colleges and Schools, Southern Association of Colleges and Schools, and Western Association of Colleges and Schools.

73. "Regular basis" means occurring with normal frequency or routine schedule.

74. "Relative" means any of the following direct relationships by blood to the first degree, marriage, or adoption: parent, grandparent, son, daughter, grandson, granddaughter, brother, sister, stepparent, stepbrother, stepsister, stepson, stepdaughter, uncle, aunt, niece, nephew, or first cousin.

75. "Reside" means to be in a residence, to dwell permanently or continuously, or to occupy a place as one's legal domicile.

76. "Protective Resilient surfacing" means an Department-approved material that is used beneath climbing equipment and is designed to protect a child who falls from the highest designated play surface on a piece of equipment to the protective resilient surfacing below. Department-approved resilient surfacing includes loose fill materials such as wood chips, wood mulch, engineered wood fiber, pea gravel, synthetic pea gravel, shredded rubber tires, and sand. Solid unitary materials include poured in place surfacing, approved rubber mats, playground tiles, and artificial turf with built in resilient pad.

77. "Restraint" means any method or device used to involuntarily limit freedom of movement including, but not limited to, bodily physical force, physical restraint, mechanical devices, or chemicals.

78. "Reverse evacuation drill" means a drill in which persons seek shelter and safety inside a building when said persons are outside the building and are faced with a threat, such as an armed individual, extreme weather, or a dangerous animal.

7979. "Routine medications" means any prescribed oral, topical, or inhaled medication, or unit dose epinephrine, that is administered pursuant to section 26.5-5-32526-6-119, C.R.S.

800. "Safe" means free of hazards posing danger of injury including, but not limited to, "keep out of reach" items, protrusions, broken items, areas of entrapment, strangulation or choking hazards, insufficient cushioning, poisonous chemicals, etc.

811. "Sanitary" means clean and not dangerous for your health, or protecting health by removing dirt and waste, especially human waste.; the removal of dirt, and infection, so that places are clean and healthy for people to live in.

822. "Sanitized or sanitary" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals, registered with the U.S. Environmental Protection Agency, for sufficient time to reduce the bacterial count, including pathogens, to a safe level.to remove filth or soil and some small bacteria. For an inanimate surface to be considered sanitary the surface must be clean and the number of germs must be reduced to such a level that disease transmission by that surface is unlikely. This procedure is less rigorous than disinfection and is applicable to a wide variety of routine housekeeping procedures.

833. "Satisfactory experience" means the adequate practical knowledge, skill or practice necessary.

844. "Serious" means an injury or illness of an urgent nature needing immediate emergency attention.

855. "Serving" means an amount of food or beverage that is appropriate to meet a child's nutritional and developmental needs.

866. "Severeweather drill" means a drill in which occupants of a building seek shelter appropriate to the severe weather threat, such as a blizzard, electrical storm, flood or tornado.

877. "Shelter-in-place drill" means a drill in which the occupants of a building seek shelter in the building from an external threat.

888. "Social-emotional development" means the development of self-awareness and self-regulation as reflected in the desire and growing ability to connect with others and the ability to experience, express and regulate a full range of emotions, to pay attention, make transitions from one activity to another, and cooperate in the context of relationships with others.

8989. Soft bedding means, but is not limited to; any soft sleep surface like bumper pads, pillows, blankets, quilts, comforters, sleep positioning devices, sheepskins, blankets, flat sheets, cloth diapers, bibs, plush toys, pacifiers with stuffed animals attached, and stuffed animals."Soft bedding" means, but is not limited to, any soft sleep surface like a water bed,; sofa,; pillows;, bumper pads,; soft materials like fluffy blankets, thick blankets; and/or comforters, sheep skins, plush toys, and stuffed animals.

900. "Special need" means a child may have mild learning disabilities or profound developmental disabilities of mental functioning and/or bodily movement; food allergies or terminal illness; developmental delays that catch up quickly or remain entrenched; occasional panic attacks or serious psychiatric problems.

911. "Aide or Staff aide" means an individual who assists the provider or equally qualified substitute provider in the care of children at a family child care home. An aide or staff aide must never be allowed to supervise a child(ren) alone. The primary provider, applicant 2, equally qualified provider, or qualified substitute provider must always be present at all times when the aide or staff aide is providing care for a child(ren).

922. "Staff Member" means a paid or unpaid individual, staff aide, and or substitute that care for or assists with the care of children.

93. "UniversalStandard precautions" means safe work practices to prevent exposure to blood and bodily fluids.

944. "Substitute provider" means a paid, volunteer or contract individual responsible for caring for the children in the capacity of the employee, staff aide, or staff member. The primary provider, applicant 2, equally qualified provider, or qualified substitute must always be present at all times when a substitute is providing care for childrenprovider during the provider's absence.

"Sweet foods" means a sweet bread or grain product that is high in fat and /or sugar.

95. "Under the influence" means that a person that has injected, inhaled, ingested, or otherwise taken any substance that impairs their ability to care for children. is under the influence of any substance that impairs their ability to care for childrendrugs or alcohol to the point that his/her actions and/or behavior present an immediate danger to her/himself or others.

96. "Urgent" means an unforeseen combination of circumstances that requires immediate attention.

96. "USDA" means the United States Department of Agriculture.

977. "Use zone" formerly known as "fall zone" is the area under and around equipment used for gross motor activities that a child either falling from or exiting the equipment is expected to landmeans the distance that a child can fall from elevated equipment based upon the child's age and size.

988. "Varying" means to be at different times or different days; to give variety to activities; to bear no resemblance to a prior activity.

9999. "Verbal abuse" means abusive behavior involving the use of language that is demeaning and is intended to insult, manipulate, ridicule, or offend. Harmful acts and the use of harsh or coarse language often characterize it.

1000. "Volunteer" means a person who performs a service willingly and without pay. The provider, applicant 2, equally qualified provider, or qualified substitute must always be present at all times when a volunteer is providing care for children.

1011. "Written medication order" means a document for a specific medication for a specific child signed by the child's health care provider. This must be a person with prescriptive authority. The order mustshall include the child's name, medication, dose, time, route, and for how long the medicine is to be given. Orders for children over two (2) years of age can only be valid for a period of up to one year, but may only be for a very brief duration of time as well. Children over two (2) may need written medication orders more frequently since the dosage of the medication will change with the child's weight. Written

orders may also include information on the reason the medication is being given, potential side effects and any special instructions for administration.

7.707.22 TYPES OF FAMILY CHILD CARE HOMES

2.305 REQUIREMENTS

A. All family child care home licenses, except infant/toddler, are issued with an age range for children from birth to eighteen (18) years of age. This allows for the care of older children with special needs. Each individual provider will determine the age range of children that they he/she will enroll in the provider's child care home. The providers own birth, adopted, step or foster children ten (10) twelve (12) years of age and older do not count in the provider's license capacity.

1. The capacity for a family child care home (generally referred to within these rules as "the home") is determined by the amount of indoor and outdoor space designated for child care, as well as the following below factors.

21. Licensed family child care homes enrolling children five (5) years of age or younger are required to participate in Colorado Shines, the state quality rating and improvement system.

2.306 A REGULAR FAMILY CHILD CARE HOME

AB. In A regular family child care home (FCCH) home, license allows a provider to care may be provided for up to six (6) children from birth to eighteen (18) years of age with no more than two (2) children under eighteen (18) months two (2) years of age.

1. Care also may be provided for no more than two (2) additional children of school age attending full-day school. school-age children attending kindergarten through twelfth (12) grade children include children six (6) years of age and older who are enrolled in the first grade or above. A child enrolled in a kindergarten program is not considered a school-age child until the child begins attending kindergarten a year before they enter first grade.

2. Residents of the home under ten (10) twelve (12) years of age who are on the premises and all children on the premises for supervision are counted against the approved capacity, except where specifically indicated otherwise. Residents of the home include, but are not limited to, birth, adopted, step or foster children of the provider.

2.307 A THREE (3) UNDER EIGHTEEN (18) MONTHS FAMILY CHILD CARE HOME

AC. A three (3) under eighteen (18) months two (2) family child care home license is a type of license that allows a provider to care for up to six (6) children from birth to eighteen (18) years of age with no more than three (3) children under eighteen (18) months two (2) years of age, with no more than two (2) of the three (3) children under twelve (12) months; the capacity includes the provider's own children under ten (10) twelve (12) years of age. This license type may be approved with the following conditions:

1. The licensee has held a permanent license to operate a family child care home for at least two (2) years in Colorado immediately prior to the issuance of the license that would authorize the care of three (3) children under eighteen (18) month two (2) years of age.;

2. The licensee has completed the State Department approved Expanding Quality in Infant/Toddler care course of training or three semester credit hours from a regionally accredited college or university in infant/toddler theory.;

3. In the past two (2) years, the licensee has had no founded substantiated complaints with a severity level of one (1) or two (2) to three (3)., consistent or willful substantiated rule violations of ratio, supervision, safety, or injury to a child observed during any licensing visit, or adverse licensing action;

4. In the past two (2) years, the licensee has had no adverse action taken against their license.

54. The care of additional children of school age is not authorized;.

65. Licensees issued a three (3) children under eighteen (18) months two (2) years of age license are approved for both the three (3) under eighteen (18) months two (2) and the regular license capacities and may switch between the two (2) capacities without notifying the State Department as long as they are in compliance with all licensing rules.

2.308 INFANT/TODDLER FAMILY CHILD CARE HOME

AD. An infant/toddler family child care home license allows a provider to care is a type of family care home that provides less than twenty-four (24) hour care only for children who are between birth and three (3) years old. This license type may be approved with the following conditions:

1. If there is one (1) provider, there may be a maximum of four (4) children, with no more than two (2) of the four (4) children under twelve (12) months of age, including the provider's own children. The provider's own children, under the age of ten (10) twelve (12), count in the capacity of four (4).

a. For an infant/toddler home with one (1) provider, that provider must be at least twenty-one (21) years of age; and.

1) If previously licensed to operate a family child care home, there must have been no:

a) Founded complaints with a severity level of one (1) or two (2) in the past two (2) years; and

b) Adverse action taken against their license in the past two (2) years.

2. If there are two (2) equally qualified providers, as specified in rule sections 2.308(A)(2) and 2.308(A)(3) 7.707.31, B, 3, caring for children at all times when children are present, there may be a maximum of eight (8) children between birth and three (3) years old, and no more than four (4) of those children can be between birth and one (1) year old, including both providers' own children under the age of ten (10) years old.

a. For an infant/toddler home with two (2) providers, one (1) provider must be at least twenty-one (21) years of age, and the second equally qualified provider must be at least eighteen (18) years of age; and.

1) If previously licensed to operate a family child care home, there must have been no:

a) Founded complaints with a severity level of one (1) or two (2) in the past two (2) years; and

b) Adverse action taken against their license in the past two (2) years.

3. The family child care homeprimary providers at an infant toddler family child care home must meet one (1) of the following criteria:has completed the State Department approved Expanding Quality Infant/Toddler (EQ I/T) course of training; and

a. Must have completed the Department approved Expanding Quality in Infant/Toddler care course or three (3) semester hours from a regionally accredited college or university in infant/toddler theory prior to licensing; and

1) A minimum of one (1) year (1820 hours) of full time experience Iin a licensed program caring for children who are younger than three (3) years old.

b. Must have completed the Department approved Expanding Quality in Infant/Toddler care course or three semester credit hours from a regionally accredited college or university in infant/toddler theory prior to licensing; and

1) A current Early Childhood Professional credential level 3 or higher in version 3.0 as determined by the Department based on its Early Childhood Professional Credential 3.0 Worksheet, found at https://drive.google.com/file/d/10FQQw4q0G01W9Sszs0o1Kkit2HhkbFV/view, or a current director qualifications letter issued by the Department.

4. A family child care home provider that has also been licensed as a regular and three (3) under eighteen (18) monthstwo (2) family child care home provider in the past, and is approved for an infant/toddler license, has the flexibility to provide care on any given day for the ages and capacities of a regular or three (3) under eighteen (18) monthtwo license without written approval of the State Department, as long as the provider is in compliance with all applicable rules at all times.B. Infant/Toddler Home Provider Requirements

3. Each provider must have completed one (1) year of supervised experience caring for children who are younger than three (3) years old. The provider must be able to submit to the State Department official written verification of the required experience. The experience may have been obtained as:

a. A Colorado licensed family child care home;

b. A military licensed child care home;

c. A provider, in a family foster home certified for children younger than three (3) years of age; or,

d. An employee in a licensed child care center in an infant and/or toddler program.

2.309 LARGE FAMILY CHILD CARE HOME

AE. A large family child care home license allows a provider to is a family child care home that provides care for upseven (7) to twelve (12) children from birth to eighteen (18) years of age; the capacity includes the provider's own children under ten (10) years of age. Care may be provided to no more than two (2) children under eighteen(18) months two (2) years of age. This license may be approved with the following conditions:

1. The licensee must be at least eighteen (18) years of age, and the primary provider for, and must reside in the large family child care home. Child care may be provided to children from birth to eighteen (18) years of age. The provider needs an assistant when the ninth child arrives at the facility.

2. If the provider was previously licensed to operate a family child care home, there must have been no:

   a. In the past two years, the licensee has had no substantiated Founded complaints with a severity level of one (1) or two (2) in the past two (2) years to three (3), consistent or willful substantiated rule violations of ratio, supervision, safety, or injury to a child observed during any licensing visit, or adverse licensing action; and,

   b. Adverse action taken against their on the license within the plast two (2) years.; and c. Substantiated specific rule violations of ratios, supervision, safety, or injury to a child observed during any licensing visit in the past two (2) years.

3. The primary provider at a large child care home must meet one (1) of the following criterioncriteria:

   a. A minimum of twenty-one (21) monthstwo (2) years of documented satisfactory experience in the group care of children under the age of six (6) years or as a licensed family child care home provider in Colorado. Equal experience operating as an approved military child care home is accepted;, or,

   b. A minimum of sixty (60) credit hourstwo (2) years of college education from a regionally accredited college or university, with at least one (1) college course in early childhood education, plus one (1) year of documented satisfactory experience in the group care of children as:

      1) A licensed family child care home provider in Colorado;

      2) A military licensed family child care home;

      3) A Colorado certified family foster home; or,

      4) A staff member in a licensed child care center.

   c. Current certification as a child development associate (CDA);, or,

   d. Completion prior to licensing of the State Department approved Expanding Quality in Infant/Toddler care course or three (3) semester credit- hours from a regionally accredited college or university in infant/toddler theory prior to licensing; and,

      1) A minimum of one (1) year (1,820 hours)two (2) years of experience as a licensed child care provider holding a permanent license in Colorado immediately before becoming a licensee of a large child care home; or,

      2) A minimum of one (1) year (1,820 hours)two (2) years of full-time experience in a licensed program. The group care shall must have been with children who are under the age of six (6) years.

e. A current early childhood professional credential level III (3) or higher as determined by the Department using version 3.0 of its worksheet found at https://drive.google.com/file/d/10FQQw4q0G01W9Ssczs0o1Kkit2HhkbFV/view; or individuals who have a current director qualifications letter issued by the Department.

f. A current director qualifications letter issued by the Department.

4. When more than eight (8) children are present, a second staff member that is qualified as an applicant 2, equally qualified provider, qualified substitute, staff member, or staff aide is required.

a. Staff aides must be at least sixteen (16) years of age and must work directly under the supervision of the primary provider in charge and responsible for the care of the children. If left alone with children, the staff aide ~~or assistant provider~~ must meet ~~all~~ the same age and training requirements listed in rule sections 2.311, 2.312, and 2.313 as the primary provider, applicant 2, an equally qualified provider, or qualified substitute ~~the provider.~~

2.310F. ~~The~~AN EXPERIENCED FAMILY ~~CHILD~~ CARE PROVIDER

A~~1~~. An experienced family child care provider ~~(ECCP)~~ license allows a provider to ~~home is a licensed child care home where~~ care ~~is approved~~ for no more than nine (9) children of different age combinations depending upon which option the home is operating under; the capacity includes the provider's own children under ten (10) years of age.

1~~2~~. The ~~requirements for an~~ experienced family child care provider must~~are~~:

a. Have been a licensed family child care home ~~provider~~ in Colorado for at least the last five (5)~~six (6)~~ consecutive years; have equal experience operating as a licensed military family child care home is acceptable; or 9,100 hours of documented experience working in a Colorado licensed child care facility in the role as a director or as a Department certified early childhood teacher based on the qualifications found at https://cdec.colorado.gov/professional-certifications;

b. Have completed ~~ninety (90) clock hours of training within the preceding six (6) years, including~~ the ~~State~~ Department approved Expanding Quality in Infant/Toddler care course, or three (3) semester credit hours from a regionally accredited college or university in infant/toddler theory~~. The ninety (90) hours of training does not include licensing training universal precautions, First Aid and CPR, and medication administration training~~;

c. Have completed seventy-five (75) clock hours of training within the preceding five (5) years, or have a current early childhood professional credential level III (3) or higher ~~in version 3.0~~ as determined by the Department using version 3.0 of its worksheet found at ~~https://drive.google.com/file/d/10FQQw4q0G01W9Ssczs0o1Kkit2HhkbFV/view;~~; or individuals who have a current director qualifications letter issued by the Department. The seventy-five (75) clock hours of training does not include pre-licensing training, standard precautions, First Aid and CPR, or Medication Administration training;

d~~c~~. Have had no founded complaints with a severity level of one (1) or two (2) in the preceding past two (2) years;~~Have had no adverse licensing action~~; and

ed. Have had no adverse action taken against the provider's license in the ~~preceding~~ past two (2) years~~; and~~,.

~~e. Comply with local zoning restrictions.~~

23. Applying for the Experienced Family Child Care Provider License

At least sixty (60) calendar days prior to the proposed date of operation as an experienced provider, the applicant must submit to the ~~State~~ Department a completed and signed experienced provider application form, which:

a. Affirms compliance with all the rules for licensed family child care homes ~~providers~~ and experienced providers; and

~~b. Affirms that the 90 clock hours of training have been completed;~~

~~c. Includes an agreement to waive the right to appeal rules related to capacity and space requirements; and,~~

bd. Affirms the provider understands that the ~~experienced provider's~~ license will be submitted for adverse action~~immediately revert to a regular license~~ if capacities are exceeded at any time.

34. ECCP Options Table

The following chart describes the various options available to the experienced family child care home. Providers may change options without notifying the ~~State~~ Department, as long as the home is in compliance with one option at any one time and all applicable licensing rules.

Experienced Family Child Care Provider License

Ages/Options	**Option 1**		**Option 2**		**Option 3**		**Option 4**		**Option 5**	
Children Birth Through 18 Years	7	No more than 2 under 18 months	8	No more than 2 under 18 months	5	No more than 2 under 18 months	6	No more than 3 can be under 18 months**	4	
	+		+		+		+		+	
Additional School-Age Children (during non-school times)	2		1		4		3		0	
	=		=		=		=		=	

Maximum Capacity of Children at Any Given Time	**9**		**9**		**9**		**9**		**4**	
Infants under 12 months **No more than 2 children can be under 12 months	N/A		N/A		N/A		** Only two can be under 12 months of age.		** Only two can be under 12 months of age.	

All options include provider's own children under ten (10) twelve (12) years of age.

Total Children in Care at a Given Time	Birth Up to School-Age	Additional School-Age	Number of Children Under 2 Allowed	(Of Those Under 2) Number Under 12 Months Allowed
9	7	2	2	2
9	8	1	2	2
9	5	4	2	2
9	6	3	3	2

7.707.3 PERSONNEL AND RESIDENTS OF THE HOME

All infant/toddler family child care homes and large family child care homes must meet all of the personnel requirements in Section 7.707.31, except where rules specific to infant/toddler homes and large family homes replace other rules.

2.311 7.707.31 REQUIREMENTS FOR PERSONNEL AND RESIDENTS OF THE HOME

A. General Requirements for providers, applicant 2, equally qualified providers, qualified substitutes, staff members, volunteers, and residents of the home.

1. Primary providers and applicant 2 must physically reside at the family child care home and must provide the child care.

2. The primary provider must have a plan for an urgent, emergency, personal or family situation that requires the provider to leave the family child care home immediately.

3. A qualified substitute can substitute for the primary care provider for a period up to twelve (12) weeks or (480 hours) per calendar year.

4. The parent(s) or guardian(s) must be notified each time a substitute is used to provide supervision of children in the absence of the primary provider, applicant 2, or equally qualified provider.

5. Primary providers, applicant 2, equally qualified providers, and qualified and/or substitutes must be at least eighteen (18) years of age.

6. Staff aides and volunteers must be at least sixteen (16) years of age,. Aides and volunteers shall and work under the direct supervision of a primary provider, applicant 2, equally qualified provider, or qualified substitute at all times.

73. Primary providers, applicant 2, equally qualified providers, employees, qualified substitutes, staff members, and volunteers must demonstrate an interest in and knowledge of children and a concern for their proper care and well-being.

84. Primary provider's or an applicant 2's own children, or children they have legal custody and control over Children for whom the primary provider or applicant 2 has custody and responsibility must not have been placed in foster care or residential care primary provider or an applicant 2 must not or have had their parental rights modified by court order because the primary provider or other resident of the home an applicant 2 was abusive, neglectful, or a danger to the health, safety, or well-being of those children.

95. Primary providers, applicant 2, equally qualified providers, qualified substitutes, all staff members, and volunteers must not be under the influence of any substance that impairs their ability to care for children.

106. The primary provider is responsible for ensuring that applicant 2, equally qualified providers, qualified substitutes, all staff membersemployees, substitutes and volunteers are familiar with the children in care, the "General Rules for Child Care Facilities," the "Rules Regulating Family Child Care Homes," rules, "Rules Regulating Special Activities," the home's policies, and the location of children's files, and emergency numbers.

117. The primary provider must plan for the selection, orientation, training and/or staff development of all equally qualified providers, qualified substitutes, staff members, and volunteersany employee, volunteer, or substitute.

128. The primary provider must plan for the and supervision,e the care, and activities of children.

139. Prior to license approval, theAll primary providers, applicant 2, and all persons residing in the home must obtainsubmit to the State Department at time of original application on the form required by the State Department, a health evaluation a medical statement signed and dated by a licensed physician or other health care provider. professional.

a. All equally qualified providers, qualified substitutes, and staff members must obtain a medical statement signed and dated by a licensed physician or other health care provider within thirty (30) days of employment.

140. Subsequent health evaluations for the primary provider, applicant 2, and children residing in the home who are less than ten (10)twelve (12) years of age must be obtainedsubmitted every two (2) years or as required in a written plan signed by a licensed physician or other health care providerprofessional. A new family member and/or a new resident of the home must obtainsubmit to the State Department, a health evaluation form signed and dated by a licensed physician or other health care provider within thirty (30) days from the date the individual began living in the home, a State

Department approved health evaluation form signed and dated by a licensed physician or other health professional.

a. All equally qualified providers, qualified substitutes, and all staff members must obtain a subsequent health evaluation every two (2) years or as required in a written plan signed by a licensed physician or other health care provider.

151. If, in the opinion of a physician or mental health practitioner, a physical, medical (including side effects of medication), emotional, or psychological condition exists at any time that may jeopardize the health of children or adversely affect the ability of a provider to care for children, an equally qualified substitute provider must be employed, or child care services must cease until the physician or mental health practitioner states in writing that the health risk has been eliminated.

16. The primary provider, applicant 2, the equally qualified providers, qualified substitutes, and all staff members must be familiar with the names, ages, and any special needs or health concerns of the children.; and,

17. The primary provider, applicant 2, the equally qualified provider, qualified substitutes, and all staff members must be familiar with the location of children's enrollment records as listed in rule section 2.320 emergency information.

18. Primary provider, applicant 2, equally qualified providers, qualified substitutes, and all staff must register with the Colorado Shines Professional Development Information System.

19. Prior to working with children, all equally qualified providers, qualified substitutes, and all staff members must read and be trained on the policies and procedures for the administration of medications and sign a statement indicating that they have read and have been trained on the center's administration of medications policies and procedures.

2.312 7.707.3 TRAINING

A. Every required training in this rule section 2.312 must be documented and available for review by the Department.

B. Prior to issuance of the license or providing care to children, the licensee and primary provider, applicant 2, and equally qualified provider, must complete Aa Department approved fifteen (15) clock hour pre-licensing course of training.:

11. A State Department approved fifteen (15) clock hour pre-licensing course of training that includes nine (9) core knowledge standards. The content of one of the standards must specifically address appropriate guidance with children and that corporal discipline is never allowed. The clock hours of pre-licensing training do not include certification in First Aid, CPR, and medication administration training;

2. A monitored written test or approved alternate method to verify knowledge and comprehension of the content of the training materials must be administered by the trainer to the trainee at the end of the pre-licensing training course. The trainee must have a passing score of no less than 80%. Part of approval of pre-licensing is that the provider must be able to access and understand the Rules Regulating Family Child Care Homes. The provider must take pre-licensing training for any original application except for change of address; or,

13. The following individuals are exempt from pre-licensing training:

a.) Individuals who have aare currently director qualifications letter issued by the Department; or or have a two (2) or four (4) year degree in early childhood education from a regionally accredited college or university are exempt from pre-licensing training, except for the one and one-half (1½) hours of universal precautions training, and the section of the pre-licensing training that covers the business requirements for operation of a home; and,

b.) Individuals with a Bachelor's, Master's, or Doctorate degree from an accredited college or university with a major area of study in Elementary Education or Early Childhood Education.

CB4. Prior to working with children, the primary provider, applicant 2, equally qualified providers, qualified substitutes, and all staff members must complete a Department-approved training in standard precautions that meets current occupational safety and health administration (OSHA) requirements prior to working with children. This training must be renewed annually.A state department approved training in standard precautions that meets current occupational safety and health administration (OSHA) requirements prior to working with children. This training must be renewed annually and may be counted towards ongoing training requirements. This standard precautions training can be included as part of the pre-licensing training, in which case the total number of hours for pre-licensing training required in 7.707.a1 is increased to sixteen (16) clock hours, and standard precautions training may count as no more than one (1) hour of the sixteen (16) clock hours; and,

DC. Prior to working with children, the primary provider, applicant 2, equally qualified provider, and qualified substitutes must complete the a Department-approved First Aid and CPR training, for all ages of children from infant to twenty-one (21) years of age;

1. Prior to working with children all staff members caring for children not required by rule to be certified in First Aid and CPR must complete the Department-approved basic First Aid and CPR module. This module must be renewed every two (2) years.

ED. Prior to working with children, the primary provider, applicant 2, equally qualified provider, and qualified substitutes must complete aThe State Department approved course of training for medication administration. This course must be completed every three (3) years and can be applied towards ongoing annual training hours in the year that it is completed;

5. Documentation of this training must include the number of hours of training, completion date, and expiration date. Renewal of standard precautions training can be taken as a part of the first aid training, but must be in addition to the renewal First Aid training;

FE8. Prior to working with children, the primary provider, applicant 2, the equally qualified provider, qualified substitutes, and all staff members Effective December 31, 2016 all providers and staff must complete a building and physical premises training. The training must include identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, vehicular traffic, handing and storage of hazardous materials, and the appropriate storage of biological contaminants. prior to working with children An updated training is required for any changes to the building or physical premises. The training must include:

1a. This training is developed and facilitated by the primary provider for applicant 2, equally qualified providers, qualified substitutes, and all staff members to identify specific environmental hazards at the family child care home. Applicant 2, equally qualified providers, qualified substitutes, and all staff members must be retrained if there are changes to the building and physical premises. Identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and

2b. Handling and storage of hazardous materials and the appropriate disposal of bio-contaminants.

GF10. Prior to working with children, if working with children less than three (3) years of age, the primary provider, applicant 2, the equally qualified provider, qualified substitutes, and all staff membersEffective December 31, 2016 each provider, staff member or regular volunteer working with children less than three (3) years of age must complete a Department approved prevention of shaken baby/abusive head trauma. This training must be renewed every two (2) years and can be applied towards ongoing annual training hours in the year that it is completed.;training prior to working with children less than three (3) years of age. This training must be renewed annually and may count towards ongoing training requirements.

HG11. Prior to working with children the primary provider, applicant 2, the equally qualified provider, qualified substitutes, and all staff members Effective 12/31/2016 each provider, staff member or regular volunteer must complete a Department approved training about child abuse prevention, including common symptoms and signs of child abuse within thirty (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

HH. Prior to working with infants, the primary provider, applicant 2, the equally qualified provider, qualified substitutes, and all staff members must complete a Department-approved safe sleep training. This training must be renewed annually.

II9. Within thirty (30) calendar days of caring for children the primaryEffective December 31, 2016 each provider and all individuals and anyor staff member responsible for the collection, review, and maintenance of the child immunization records must complete the Colorado Ddepartment of public Public hHealth and Eenvironment (CDPHE) immunization course within thirty (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

JJ. Within thirty (30) calendar days of caring for children the primary provider, applicant 2, the equally qualified provider, qualified substitutes, and all staff must complete a Department-approved training regarding playground safety for homes. This course is required once and will be counted towards ongoing training requirements;

K. Within thirty (30) calendar days of caring for children, the primary provider must ensure that equally qualified providers, qualified substitutes, and all staff members must read and be trained on "Rules Regulating Family Child Care Homes," the "General Rules for Child Care Facilities," and the "Rules Regulating Special Activities," if applicable.

LK. Within ninety (90) calendar days of caring for children the primary provider, applicant 2, the equally qualified provider, qualified substitutes, and all staff must complete a Department-approved introduction to the early intervention and preschool special education programs. This course is required once and will be counted towards ongoing training requirements;

ML. Within ninety (90) calendar days of caring for children the primary provider, applicant 2, the equally qualified provider, qualified substitutes, and all staff must complete a Department-approved training for recognizing the impact of bias on early childhood professionals. This course is required once and will be counted towards ongoing training requirements;

NM. Within ninety (90) calendar days of caring for children all qualified substitutes, and staff members must have at least one (1) hour of child development training. This training must include the major domains (cognitive, social, emotional, physical development and approaches to learning). This

course is required once and will be counted towards ongoing training requirements if taken after the date of hire.

ON. Within ninety (90) calendar days of caring for children the primary provider, applicant 2, the equally qualified provider, qualified substitutes, and all staff must complete a Department-approved training regarding "Iinjury pPrevention for Homes." This course is required once and will count towards ongoing training requirements.

PO. Within ninety (90) calendar days of caring for children the primary provider, applicant 2, and the equally qualified provider must complete the Department-approved training "Working with an Early Childhood Mental Health Consultant." This course is required once and will be counted toward ongoing professional development.

BQ. The primary provider, applicant 2, equally qualified provider, qualified substitutes, and all staff membersLicensees requesting continuation of a permanent license shall:

1. Complete a minimum of fifteen (15) clock hours of ongoing professional developmentof training each year. At least three (3) of the fifteen (15) clock hours must be in social emotional development.; and,

   a.2. Ongoing training and courses shall demonstrate a direct connection to one or more of the following competency areas:

      1)a. Child growth and development and learning courses that align with the competency domains of child growth and development;

      2)b. Child observation and assessment;

      3)c. Family and community partnership;

      d. Guidance;

      4)e. Social-emotional health and development promotion;

      5) Health, safety, and nutrition;

      6)f. Professional development and leadershippractice; and

      g. Program planning and development; and

      7)h. Teaching practices.;

2.1) Each one (1) semester hour course with a direct connection to the competency area listed in rule section 2.312(P)(1)(a)7.707.33, b, 2, a-g, taken at a regionally accredited college or university shall count as fifteen (15) clock hours of ongoing training.

3.2) Training hours completed can only be counted during the year taken and cannot be carried over.

4.3) The fifteen (15) clock hours of training do not include recertification in First Aid and CPR.

5.4) To be counted for ongoing training, a provider must receive for each training, a training certificate that includes:

a.) The title of the training; and,

b.) The competency domain or from a nationally approved vendor listarea; and,

c.) The date and clock hours of the training; and,

d.) The name and signature of the trainer or another approved method of verifying the name and qualifications of the trainer;.

e. Expiration of training, if applicable; and

f. Connection to social-emotional focus, if applicable.

6.e) The trainer must have documentation of the qualifications for each topic of training conducted, which must be available for review by representatives of the State Department.

2.313. RECORDS FOR EQUALLY QUALIFIED PROVIDERS, QUALIFIED SUBSTITUTES, AND ALL STAFF MEMBERS

7.707.36 Employee, Volunteer, and Substitute Records

A. Personnel files for each employee, substitute, and volunteer must contain all required information within thirty (30) calendar days of the first day of employment, volunteering, or functioning as a substitute.

AB. The Prior to working with children, unless otherwise specified in rules, personnel files for equally qualified providers, qualified substitutes, and all staff members musteach employee, substitute, and volunteer shall be available for review by any representative of the State Department and must include:

1. The name, address, telephone number, and birth date of the individual, and emergency contact information, including names, addresses, and telephone numbers;

2. Information received from the state automated systems check on child abuse;

3. Information received from the fingerprint based criminal record background check as required at Section 7.701.33;

2. A health evaluation signed and dated by a licensed physician or other health provider as defined in rule section 2.304;

34. A record of the dates and hours of employment, volunteering, or functioning as a substitute, including the first date and the final date;

5. Names, addresses, and telephone numbers of persons to be notified in the event of an emergency; and,

46. Within (30) calendar days of caring for children a signed statement indicating that the individual has been trained, understands, and has had the opportunity to ask questions regarding the "Rules Regulating Family Child Care Homes," the "General Rules for Child Care Facilities," and the "Rules Regulating Special Activities," if applicable. A signed statement verifying that the individual is familiar with these "Rules Regulating Family Child Care Homes," the "General Rules for Child Care Facilities," and the "Rules Regulating Special Activities," if applicable;:

a. Clearly defining child abuse and neglect pursuant to state law and outlining the employee, substitute, or volunteer's personal responsibility to report all incidents of suspected child abuse or neglect according to state law; and,

5b. A signed statement verifying that the individualVerifying that the employee, substitute, or volunteer has read and understands the providerhome's policies and procedures;.

6. Personnel records for qualified substitutes, and all staff members, must also include official written verification of education, work experience, and previous employment, as applicable for the position;

7. Verification training as required in rule section 2.312; and

8. All information and documentation from background checks as required rule sections 2.1120 and 2.1121 of the "General Rules For Child Care Facilities."

7. Official written verification of training, completion and expiration dates as required for the position including:

a. Current First Aid and CPR for all ages of children;

b. Universal precautions; and,

c. Medication administration training.

8. Official written verification of education, work experience, and previous employment, as applicable for the position; and,

9. If obtained, a copy of a current Colorado Early Childhood Professional Credential.

7.707.33 Substitutes

All infant/toddler family child care homes and large family child care homes must meet all of the substitute requirements, except where rules specific to infant/toddler homes and large family homes replace other rules.

2.314 7.707.331 REQUIREMENTS FOR EMERGENCY SUBSTITUTES FOR THE PRIMARY PROVIDERGeneral Substitute Information

A. The provider must have a plan for an urgent, emergency, personal or family situation that requires the provider to leave the family child care home immediately.

AB. EmergencyAny substitutes must be at least eighteen (18) years old and capable of providing care and supervision of children, and handling emergencies in the absence of the provider.

B. Emergency substitutes must:

1. Be given the names; and ages of the children, and any special needs or health concerns;

2. Immediately call each parent(s) or guardian(s) to notify them that the provider has been called away from the family child care familiar home for an emergency or urgent situation; and

3. If the substitute does not meet all the requirements the same age and training requirements as listed in rule sections 2.311, 2.312, and 2.313 as the primary provider, applicant 2, an equally qualified provider, or qualified substitute for the position for which they are substituting, they shall notify parent(s) or guardian(s) immediately to pick up their children.

C. Prior to caring for children, any substitute, except a substitute used in an urgent, emergency, personal or family situation, shall become familiar with:

1. The Rules Regulating Family Child Care Homes;

2. The home and provider's policies and procedures;

3. The names, ages and any special needs or health concerns of the children; and,

4. The location of emergency information.

D. Parents or guardians must be notified each time a substitute is used to provide supervision of all children in care in the absence of the primary provider.

E. Substitutes used in an urgent, emergency, personal or family situation must:

1. Be given the names, ages of the children, and any special needs or health concerns;

2. Immediately call each parent(s) or guardian(s) to notify them that the provider has been called away from the family child care home for a personal or family emergency; and,

3. If the substitute does not meet all the requirements for the position, must notify parent(s) or guardian(s) immediately to pick up their children.

F. In the infant/toddler family child care home, the substitute for the provider(s) must meet the same age requirements as the provider as specified in Section 7.707.31. C.

G. In the large family child care home, the substitute for the:

1. Primary provider must be equally qualified, as specified in Section 7.707.31, C, to provide care and supervision of children in the absence of the primary provider; and,

2. Staff aide must be equally qualified, as specified in Section 7.707.31, A, 2, to substitute for the staff aide when necessary.

2.3157.707.35 REQUIREMENTS FOR VOLUNTEERS

A. Volunteers cannot be used to meet the applicable staff to child ratio.

B. Volunteers must be directly supervised by the child careprimary provider applicant 2, an equally qualified provider, or equally qualified substitute, with no unsupervised access to children, and have clearly established written duties.

C. Prior to assisting with the care of children, vVolunteers must be made familiar with these "Rules Regulating Family Child Care Homes," the "General Rules for Child Care Facilities," the "Rules Regulating Special Activities," if applicable, and the provider's written policies and procedures prior to assisting with the care of children.

D. Personnel files for volunteers must include:

1. The name, address, telephone number, and birth date of the individual, and emergency contact information, including names, addresses, and telephone numbers; and

2. A record of dates and hours of volunteering, including the first date and final date. Any volunteer whose activities involve the care or supervision of children, who have unsupervised access to children; or who works more than fourteen (14) days (112 hours) a calendar year must complete:

1. A fingerprint based criminal background record check as required at Section 7.701.33; and,

2. The State Department required automated system background check for child abuse and neglect, as required at Section 7.701.32.

7.707.4 POLICIES AND PROCEDURES

2.3167.707.41 STATEMENT OF POLICIES

A. At the time of enrollment, and upon any amendments to policies and procedures, the provider must give the parent(s) or guardian(s) a written statement of the family child care home's policies and procedures, and provide the opportunity to ask questions. Written copies must be available either electronically or in hard copy. The provider must obtain a signed document stating that the parent(s)/guardian(s) have received the policies and procedures. and bBy signing the policies and procedures document, the parent(s)/guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and procedures.

B. The written policies and procedures must be developed, implemented, and followed, by the primary provider, applicant 2, equally qualified providers, qualified substitutes, and all staff members which includinginclude all updates, changesamendments, and must include at a minimum the following information:

1. Admission and registration procedures;

2. Authorization of parents or other designees to pick up children, including the policy for how the provider will respond to individuals not authorized by parent(s)/guardian(s) to pick up a child and if a parent arrives under the influence of a controlled substance;

3. An itemized fee schedule or individual fee agreement. ; fee This must include expectations regarding when fees may be reimbursed , when if a child does not attend the family child care home program; when a child is requested to leave the family child care home program; and, authorization for field trips;

4. Procedure, including fees, when a child arrives or departs at times other than expected during the agreed upon care hours of care;

5. Parent and provider responsibilities for special activities or programs outside of the family child care home licensed facility, such as inclusion and/or exclusion of children and the payment of additional fees;

6. Hours of operation or individual hours agreement to include regularly closed days and applicable special operating program hours; policy on closure due to provider illness or family emergency and unscheduled closures;

7. Procedure for managing a situation where children remain after the scheduled closure of the facility and the parent, guardian or other emergency contacts cannot be reached. This

may include notification of the local county department of social services or police, if necessary. In the event that the provider has not been approved for overnight care, the provider cannot keep the children in care beyond midnight;

8. Activities and snacks for children who remain at the home after closing;

89. Services offered for children with special needs in compliance with the Americans with Disabilities Act;

910. Acceptance and notification of enrolledof non-immunized or under-immunized children, including any children living in the licensed family child care home and notification if the provider's own birth, adopted, or step children have not been immunized;

101. Substitute care, and the clarification of responsibility for obtaining back-up care;

112. How and by whom children are supplied with appropriate clothing and equipment necessary to participate in indoor and outdoor activities, including activities that require protective equipmenthelmets, wrist protection, and knee and elbow pads when riding a scooter, bicycle, skateboard or rollerblades;

123. Storage, loss, damage, or theft of provider's or child's personal belongings;

134. Scheduled and unscheduled trips away from the family child care home, including; the requirement of for notification of the excursion prior to the event and and requirement for need writtenfor signed permission from the parent(s) or guardian(s) for eachthe excursion, and a phone number where the provider can be reached during thea field trip.; If the family child care home program provides daily transportation to and/or from care, the policy must include departure time from the family child care home, arrival time back to the family child care home, and pick up /drop off times and locations. for

145. Transportation availability, vehicle restraint requirements, and seating capacities;

156. Written authorization or denial for Developmentally appropriate media use including, but not limited to, television shows, video, music, tablets, smartphones, and software used at the facility family child care home, and time limits for all media use;

167. Meals, snacks, and parental notification of menus, and how children with food allergies or special diets are accommodated;

178. Policy on transitioning a child from either breast feeding to a bottle and/or cup, or from a bottle to a cup;

189. Behavior guidance and discipline appropriate to the age and development of the child, including positive instruction and , supporting positive behavior., discipline and consequences. Policies shall include how the provider will:

a. Promote warm and responsiveCultivate positive child, provider, staff (if applicable) and family relationships;

b. Create and maintain a socially and emotionally respectful early learning and care environment;

c. Implement strategies supporting positive behavior, pro-social peer interaction, and overall social and emotional competence in young children; and

d. Provide individualized social emotional intervention supports for children who need them, including methods for understanding child behavior, ; and developing, adopting and implementing a team-based positive behavior support plan with the intent to reduce challenging behavior and prevent suspensions and expulsions; and,

1933. How disciplinary decisions are made and what steps are taken prior to the suspension, expulsion or request to parents or guardians to withdraw a child from care due to concerns about the child's behavioral issues, , tThese procedures must be consistent with the policy as stated in 2.316(A)(18) on guidance, positive instruction, discipline and consequences, and include documentation of the steps taken to understand and respond to the child's challenging behavior; and

a. Access Identify and consult with an early childhood mental health consultant or other specialists as needed.

20. Rest time and equipment;

21. Safe sleep environments for infants in compliance with rule section 2.329(H);

22. Diapering and toilet training, including, but not limited to, process, communication, time frames, supplies, and family child care homeprimary provider's philosophy and approachesexpectation;

232. Provision of Daily outside play time including during periods of inclement or hot weather;

243. Use of and how often sunscreen is applied, including authorization for use of sunscreen, and how infants or children are protected from sun exposure without the use of sunscreen;

254. Protection of children from exposure to second hand smoke;

265. Notification of parent(s) or guardian(s) for handling children's illnesses, accidents, injuries, or other emergencies;

276. Specific circumstances and symptoms for not admitting ill children, and conditions for re-admittance;

287. Storing, administering, recording and disposing children's medicines in compliance with the State Department approved medication administration course;

298. Adverse weather precautions to include temperature extremes, ; inclement weather expectations and procedures, and fee expectations if the home is closed during inclement weather and how parent(s) or guardian(s) are notified of weather closuresnotification of how to find out;

3029. The procedures for emergencies and disaster preparedness such as but not limited to, tornadoes, fires, shelter in place, lockdown, active shooter on premises, reunification with families after emergency or disaster, and evacuating children with disabilities in compliance with the rule sections 2.126, 2.127, 2.128, 2.129, 2.130, and 2.131 of the "General Rules for Child Care Facilities";Emergency response procedures that explain, at a minimum, the life saving procedure that will be followed and how the home will function during a fire, severe weather, lockdown, reverse evacuation, or shelter-in-place emergency situation;

310. The procedures, including how parents are notified, for any child who has been separated from the group outside of the supervision of their assigned staff member or for whom the local authorities have been contacted;

32. The procedure for reporting of child abuse, including the name of the county department of social/human services and phone number of where a child abuse report should be made (see rule section 2.122 of the General Rules for Child Care Facilities)Reporting of child abuse, including the name of the county department of social/human services and phone number of where a child abuse report should be made;

331. The procedure for filing a complaint about family childcare home, including the name, address, and telephone number of the Colorado Department of Early ChildhoodDepartment (see rule section 2.121 of the General Rules for Child Care Facilities)Filing a complaint about a family child care home, including the name, address and telephone number of the Colorado Department of Human Services, Division of Child Care, where a complaint may be filed;

342. Where a parent may obtain the official copy of these "Rules Regulating Family Child Care Homes," including the location on the Colorado Secretary of State's website; and

354. Regularly identifying on a routine basis recalled toys, equipment, and furnishings, and food; and developing a plan to remove the recalled items from the family child care home.

2.317 7.707.6 COMMUNICATION, EMERGENCY AND SECURITY PROCEDURES

A. The family child care home must have a working unblocked telephone that has the capacity to receive all incoming and reverse 911 calls, and record messages voicemails during child care hours.

1. The telephone must be on the premises in the general area of the primary provider.

2. The telephone number must be made available to each parent and the Departmentlicensing authority.

3. The following emergency telephone numbers must be posted in a prominent and conspicuous location easily observable to those caring for childrennear the telephone:

a. 911 or the alternate emergency number for local fire or police;

b. Name and phone number of at least one (1) designated emergency substitute for the provider;

c. Name and physical address of the family child care home;

d. Nearest hospital or emergency medical clinic;

e. Local health department;

f. Rocky Mountain Poison Center number at 1-800-222-1222; and;

g. Location of children's personal emergency numbers.

4. The telephone and alternative emergency telephone numbers for parent(s) or guardian(s) and other authorized emergency contacts of each child in care must be accessible in one (1) designated place.

5. If 911 is not available, the provider must have a plan for accessing emergency transportation at all times.

6. The primary providerprovider, applicant 2, equally qualified provider, or qualified substitute must immediately promptly notify the child's parent(s) or guardian(s) when emergencies, accidents, injuries, or illnesses, not requiring medical attention, occur while in care.7. Emergency health care providers' numbers must be accessible in one designated place.

B. Emergency procedures

1. The provider must have a written fire safety and evacuation plan that is reviewed at least annually. This plan must include:

a. Primary and secondary emergency escape routes;

b. The procedure for assisting persons unable to escape unassisted;

c. How to account for all persons that have evacuated;

d. A primary and alternate means of notifying emergency responders of a fire or other emergency;

e. An outside meeting location; and

f. The location of fire extinguishers.

2. The primary provider home must have a written emergency plan for severe weather, lockdown, shelter-in-place situations, and active shooter situations that is reviewed at least annually. The plan must include the items listed in the rule sections 2.126, 2.127, 2.128, 2.129, 2.130, and 2.131 of the "General Rules for Child Care Facilities" as well as these additional requirementsand emergency response procedures that explain, at a minimum, the life saving procedures that will be followed, and how the home will function during a fire, severe weather, lockdown, reverse evacuation, or shelter-in-place emergency situation. The plan must include, but not be limited to:

a1. The life saving procedures that will be followed;

b. How the family child care home will function during the emergency;

c. Prompt notification of parent(s) or guardian(s);

d2. When local authorities will be notified; and

e3. How emergency transportation will be provided.

C. Release of Children

The provider must release the child only to the person(s) sixteen (16) years of age or older to whom the parent or guardian has given written authorization. If the provider who releases the child does not know the person, picture identification must be required to assure that the person is authorized to pick-up the child. Written authorization must be maintained in the child's record. In an urgent and/or emergency situation, the child may be released to a person twelve (12) years of age or older for whom the child's parent(s) or guardian(s) has given verbal authorization. If the

~~provider who releases the child does not know the person, picture identification must be required to assure that the person is authorized to pick-up the child.~~

D~~C~~. Sign In/Out Procedure

The provider must maintain a daily sign in/out method containing the date~~,~~; the child's name~~,~~; the time that the child arrived at and left the family child care home~~,~~; and the parent, guardian, or authorized person's signature. A full signature or other unique identifier is required by the parent(s) or guardian(s) every time the child arrives at or leaves the family child care home. The provider may sign in or out children who arrive directly from school or an activity as needed on a daily basis. The provider must use their full signature or other unique identifier. The parent(s) or ~~/~~guardian(s) must provide a signature on a weekly basis to verify the record.

E~~D~~. Visitors

All non-resident visitors ~~including friends of the provider's own children,~~ to the family child care home~~,~~ during child care hours, including friends of the provider's own children, ~~Visits from all non-family members to the home~~ must be documented on the sign in/out log, including the name, date, ~~and~~ arrival, and ~~/~~departure times.

2.318 ~~7.707.37~~ ADMINISTRATIVE RECORDS AND REPORTS

A. The primary provider must register their operational status information in the Department's provider status portal every calendar year in the months of April and October.

1. The primary provider must update their information any time their operational status changes during a declared state emergency. ~~The provider must report in writing to the State Department any critical incident as defined at Section 7.701.52 and any fire that occurs at the home to which a local fire department has responded.~~

B. As soon as possible, but not later than twenty-four (24) hours after the event, t~~T~~he primary provider must ~~immediately telephone and also~~ submit to the ~~State~~ Department ~~as soon as possible, but not longer than~~within twenty-four (24) hours, ~~excluding weekends and holidays,~~ a written report about any child who has been separated from the group outside of the supervision of the provider or staff member, or for whom the local authorities have been contacted~~lost from the provider's care and whether authorities have been contacted or not~~. Such report must indicate:

1. The name, birth date, address, and telephone number of the child;

2. The names of the parent(s) or guardian(s) and their address and telephone number if different from those of the child;

3. The date~~, location, time, and circumstances~~ when the child was separated from the group outside of the supervision of the provider or staff member~~last seen~~;

4. The location, time, and circumstances when the child was separated from the group;

5~~4~~. All actions taken to locate the child, including whether local authorities were notified; and~~,~~

5. The name of the provider and/or person supervising the child at the time the child was separated from the group~~last seen~~.

C. The following emergency records ~~-~~must be kept and maintained at the family child care home for twelve (12) months:

1. Dates of annual review of emergency plans per rule section 2.317(B);

2. A record of all emergency drills held over the past twelve (12) months as required in rule section 2.313 of the "General Rules for Child Care Facilities;" and

3. Dates of monthly smoke alarm testing.

D. The following records must be kept and maintained in the files at the family child care home for three (3) years after the family child care home closes its license or stops providing care under its license; a child leaves the care of the family child care hometermination of care or a staff member or volunteer terminates employment or volunteerism at the family child care home:

1. A daily attendance sign in/sign out sheet for each child, including the time the child arrives at and departs from the family child care home;

2. Children's records per rule section 2.3207.707.51.;

3. A list of current staff members, qualified substitutes, employees, and volunteers, and substitutes work schedules;

4. Primary providers, applicant 2, equally qualified providers, sStaff membersEmployee, qualified substitutes, and volunteers records per rule sections 2.311, 2.312, 2.313, 2.314, and 2.3157.707.36; and

5. A record of visitors and volunteers in the family child care home during scheduled business hours.

E. Confidentiality and Retention

1. Information and records concerning the primary provider, applicant 2, equally qualified providers, qualified substitutes, all staff members,employees, substitutes, volunteers, children and their families must be keptmaintained confidential(see rule sections 2.123 and 2.124 of the "General Rules for Child Care Facilities"). and All required records must be stored in a secure location.

2. Records for Tthe primary provider, applicant 2, equally qualified providers, qualified substitutes, all staff members, volunteers, and children and their families'Employee and children's records must be available, upon request, to authorized representatives of the State Department.

7.707.34 Employees

A. Any employee whose activities involve the care or supervision of children; or who has unsupervised access to children must complete:

1. A fingerprint based criminal background record check as required at section 7.701.33 and,

2. The State Department mandated automated system background check for child abuse and neglect as required at Section 7.701.32.

B. Additionally, employees and substitutes for the primary provider, who provide care to children for fourteen (14) days (112 hours) or more per calendar year must complete:

1. Verification of current certification of First Aid and CPR for all ages of children;

2. A statement of a current health evaluation, signed by an approved health care professional, that was completed within the last twenty-four (24) months;

3. Verification of current State Department approved medication administration training; and

4. Verification of current State Department approved universal precaution training.

ADMISSION

2.319 7.707.5 ADMISSION PROCEDURE

A. An admission process must be completed prior to the child's attendance at the family child care home and must include:

1. A pre-admission interview, by telephone or in person, with the child's parent(s) or guardian(s) to determine whether the services offered by the family child care home will meet the needs of the child and the parent(s) or guardian(s);

2. The provider must obtain a signed document stating that the parent(s) or guardian(s) have received the policies and procedures, and by signing the policies and procedures document, the parent(s) or guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and proceduresAn explanation of the provider's written policies and procedures. The child's parent(s) or guardian(s) must sign a statement indicating that they have read, received, and understand the provider's current policies and procedures;

3. An itemized fee schedule plan for payment of fees;

4. Completion of the registration information and authorizations required for inclusion in the child's record.

B. At the time of admission, the provider must obtain:

1. Contact information for parents or guardians;

2. Contact information for other responsible adults;

3. Where the parent or guardian and can be reached in the event of an accident, illness or other emergency; and,

4. The telephone number of the child's health care provider;

5. Written authority to arrange for medical care in the event of an emergency; and

6. Names of individuals authorized to take the child from the home.

2.320 7.707.51 CHILDREN'S RECORDS

A. An admission record must be completed for each child prior to or at the time of the child's admission and updated annually, or if there are when any changes occur, unless otherwise specified in these rules. The admission record must include:

1. The child's full name, date of birth, current address, and date of enrollment;

2. Family member names;

23. Parent(s) and guardian(s) home and e-mail addresses; telephone numbers, including home, work, and cell and pager numbers, if the parent chooses to provide those numbers; employer name and work address; and, any special instructions as to how the parent(s) or guardian(s) may be reached during the hours that the child is in care at the family child care home;

34. Names, addresses, and telephone numbers of persons other than parent(s) or guardians(s) who are persons aged sixteen (16) years and older who are authorized to pick uptake the child from the family child care home;

45. Names, addresses, and telephone numbers of persons who can assume responsibility for the child in the event of an emergency if the parent(s) or guardian(s) cannot be reached immediately;

56. Names, addresses, and telephone numbers of the child's health care provider, dentist, pedadontist, and hospital of choice, if applicable;

67. Health admission information, including a health care plans, chronic medical conditions, allergies, and immunization history, shall be provided to the family child care provider prior to the first day the child attends the family child care home;

78. A dated, written authorization for emergency medical care signed and updated annually by the parent(s) or guardian(s). The authorization must be notarized if required by the local hospital, clinic, or emergency health care facility;

89. A written record of any serious reportable accident, illness, or injury as defined in rule section 2.124 of "The Geneal Rules for Child Care Facilities" occurring during care must be retained in each child's record, with a copy provided to the parent or guardian;

910. Written authorization, obtained in advance of the event from the child'sa parent(s) or guardian(s) obtained in advance of the event, for a child to participate in scheduled or unscheduled field trips or excursions, whether walking or riding in an approved vehicle. If the family child care home provides daily transportation to and or from care, an annual written authorization for all children is required;

101. Written authorization for media use is required if the media use is not included in the written policies and procedures statement; including, but not limited to, television and video viewing, music, tablet and/or smart phone usage, video games, and computer use. The authorization must include approved time limits. The authorization form only needs to be on file if media use is not addressed in the home policies and procedures statement; and

112. Written authorization for special activities as defined in rule section 2.600 of the "Rules Regulating Special Activities."(see Section 7.714.1).

B. All forms contained in the admission record must be current and accessible to providers, qualified substitutes, staff members, and representatives of the State Department.

C. The complete file for each child in care must be kept confidential and retained by the family child care home primary providerhome for at least three (3) years after the child leaves the family child care home. It must be available without restriction to the Departmentlicensing agency and to the child protective services worker, police, and the child's parent(s) or guardian(s).

~~D. Except for the licensing authority, child protective services worker, police, and the child's parent(s) or guardian(s), children's reports and records and facts learned about children and their families must be kept confidential.~~

2.321 HEALTH CARE~~7.707.7 CHILD CARE SERVICES~~

~~7.707.71 Health Care, Medication, Communicable Disease, Sun Protection, Second Hand Smoke, and First Aid Supplies [Rev. eff. 6/1/12]~~

A. Statements of Health Status and Immunization

1. The provider has the right to refuse to admit a child if a statement from a health care provider is not submitted.

2. At the time of admission, the parent or guardian must provide the following information to the provider for each child entering the family child care home:

a. Health information, including any known allergies, medication being taken and possible side effects, special ~~diets~~ dietary ~~required~~requirements, and chronic health conditions;

b. If applicable, a Department-approved health care plan authorized by the child's health care provider and parent(s) and/~~-~~or guardian(s), defining the interventions needed to care for a ~~Information and health care plan on the care of each~~ child who has an identified health condition or developmental concerns, including, but not limited to: seizures, asthma, diabetes, severe allergies, heart or respiratory conditions, and physical ~~or emotional~~ disabilities.~~; and,~~ Any applicable medications, supplies, and or medical equipment must be available to the primary provider, applicant 2, equally qualified providers, qualified substitutes, and any staff members prior to the child's first day of care. The primary provider, applicant 2, equally qualified providers, qualified substitutes, and any staff members working with a child with a health care plan must be informed, trained, and delegated responsibility for carrying out the health care plan by the Department-approved child care health consultant; supervision of the plan and interventions must be documented.

c. Documentation of school-required immunization status or medical or nonmedical exemption, is required by the Colorado Board of Health.~~including month and year each immunization was administered~~. Up-to-date, school-required immunizations must be documented as specified on the Colorado Department of Public Health and Environment (CDPHE) certificate of immunization or on an "approved alternate" certificate of immunization as described in CDPHE regulations at 6 CCR 1009-2:VI(A), (May 15, 2023), no later editions or amendments are incorporated. These regulations are available from the Colorado Department of Public Health and Environment at no cost at www.sos.state.co.us/CCR. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours.~~updated and recorded as specified on the certificate of immunization or alternate certificate of immunization as supplied and approved by the Colorado Department of Public Health and Environment~~. Colorado law requires that proof of immunization be provided prior to the first day of admission.

1)~~3.~~ If the parent(s) or ~~legal~~ guardian(s) of a child ~~wishes~~ wants a~~n~~ nonmedical exemption from the immunization requirement ~~for~~

immunizations due to based on a religious belief whose teachings are opposed to immunizations or a personal beliefs that is opposed to immunizations, the child's parent(s) or legal guardian(s), must:

sa) Ssubmit the CDPHE Certificate of Nnonmedical eExemption (May 2023) with a signature from an immunizing provider in Colorado, or

b. Submit the Colorado Department of Public Health and Environment Certificate of Nonmedical Exemption (May 2023) received upon the completion of Colorado Department of Public Health and Environment Online Immunization Education Module (Aug. 2021). The Certificate of Nonmedical Exemption and Education Module are herein incorporated by reference, no later editions or amendments are incorporated. The Certificate and Education Module are available at no cost from the Colorado Department of Public Health and Environment at https://cdphe.colorado.gov/vaccine-exemptions. The Certificate is available for public copying and inspection at the Colorado Department of Early Childhood, 720 S. Ash St., Denver, CO 80246, during normal business hours. .; or complete and sign the current Colorado Department of Public Health and Environment immunization card which states the reason for such an exemption.

2ab) The family child care homeprimary provider has the right to refuse to admit any child if a completed certificate of nonmedical exemptioncurrent immunization card is not submitted.

32. Within thirty (30) days after admission, and within thirty (30) days following the expiration date, the parent(s) or guardian(s) of each child must submit a statement of the child's current health status or written verification of a scheduled appointment with a health care providerpractitioner. The statement of the child's current health status must be signed and dated by a health care provider who has seen the child within the last twelve (12) months, or within the last six (6) months for children under two and one-half (2-1/2) years of age. The statement must include when the next visit is required by the health care provider. All health statements must be kept at the licensed family child care home.

45. Statements of health status of children less than two (2) years of age must be updated as required in writing by the health care provider, or in accordance with the American Academy of Pediatrics Recommendations for Preventive Pediatric Health Care recommended schedule at https://downloads.aap.org/AAP/PDF/periodicity_schedule.pdf, (4th ed. American Academy of Pediatrics.; 2017) herein incorporated by reference. No later editions or amendments are incorporated. These recommendations are available at no cost from https://www.aap.org/-. These recommendations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours.Statements of health status of children under two (2) years of age must be updated in accordance with the national pediatric recommended schedule for routine health supervision or as required in writing by health care provider.

56. Health statements for children over two (2) years to seven (7) years of age must be updated in accordance with the American Academy of Pediatrics Recommendations for Preventive Pediatric HealthCare annually or as required in writing by health care provider.

67. For children seven (7) years of age and older, health statements must be updated every three (3) years as long as the children are in care.

4. Parent(s) or guardian(s) must be notified in the written policies if the provider's children are non-immunized, if children attending facility are non-immunized, and if children with personal and religious exemptions to immunization are accepted in care.

BC. Medication

1. Children are not allowed to bring medications to the family child care home unless accompanied by a responsible adult.

2. Any routine unexpired medication, prescription or non-prescription (over-the-counter), homeopathic or vitamin, may be administered by the providermust may be administered to a non-school-age (under the age of five (5) years) child by a primary provider, applicant 2, or staff member with the Department-requiredapproved medication administration training. Medication can be administered only with a current written order of a health care provider with prescriptive authority, and with written parental consent. Home remedies, homeopathics, vitamins, and supplements must not be administered to children in child carewhile in care at the family child care homemay never be given to a child.

a. If the routine medication involves; the administration of unit dose epinephrine, the administration must be accompanied by a written individual health care plan by the prescribing health care provider that identifies the factors for determining the need for the administration of the medication, and is limited to emergency situations only.

b. If the routine medication involves the administration of a nebulized inhaled medication, the administration must be accompanied by a written health care plan by the prescribing health care provider that identifies the factors for determining the need for the administration of the medication.

c. If applicable, the primary provider must have a written policy on the storage and access of inhalers and epinephrine carried by school-age children (five (5) years to eighteen (18) years). The policy must include a written contract with the parent(s) or guardian(s) and child acknowledgement assigning levels of responsibility of each individual. This contract includes orders for the medication from their health care provider, along with confirmation from the health care provider that the student has been instructed and is capable of self-administration of the prescribed medications .

432. The written order by the health care provider with prescriptive authority must include:

a. Child's name and birthdate;

b. Licensed prescribing health care provider's name, telephone number, and signature;

c. Date authorized;

d. Name of medication and dosage;

e. Time of day medication is to be given;

f. Route of medication;

g. Length of time the medication is to be given;

h. Reason for medication (unless this information needs to remain confidential);

i. Side effects or reactions to watch for; and

j. Special instructions.

54. Medications must be kept in the original labeled bottle or container. Prescription medications must contain the original pharmacy label.

The provider can accept such medicines only in the original container. Prescription medicine containers must bear the original pharmacy label that shows the prescription number, name of medication, date filled, physician's name, child's name, and directions for dosage. When no longer needed, medications must be returned to the parent or guardian or destroyed.

653. Over-the-counter and homeopathic medications must be labeled with the child's first and last name. The provider can administer medication only to the child whose name appears on the written order from the prescribing health care provider.

76. In the case where medication needs to be given on an ongoing, long-term basis, the authorization and consent forms must be reauthorized on an at least annual basis. Any changes in the original medication authorization require a new written order by the prescribing health care provider and a change in the prescription label.

87. The provider, applicant 2, equally qualified providers, qualified substitutes, and any staff responsible for administering medications must have a current Ddepartment-approved medication administration training;, current Department-approved CPR certification; current Department-approved first aid certification; and the Ddepartment-approved standard precautions training prior to administering medication.

a4. All providers who administer medication must have daily face-to-face communicationverbal contact with parent(s) or guardian(s) of children needing medication and must be currently trained through the State Department-approved medication administration course and must administer meditation in compliance with the concepts taught in the course.

98. All medications in the family child care home, vitamins, and supplements, except those medications specified in the Department-approved medication administration training as emergency medications, must be locked and inaccessible to children, but available to the primary provider, applicant 2, equally qualified provider, qualified substitute, or staff members trained in administering medication. The family child care homeprimary provider must have specific policies regarding controlled medications. Controlled medications must be counted, safely secured, and access to these medications must be limited.

a. If refrigeration of medication is required, it must be stored in a locked, leak- proof container in a designated area of the refrigerator separated from food.

b. The primary provider must have specific policies regarding controlled medications. Controlled medications must be counted, locked, and access to these medications must be limited.

c. All personal medications, vitamins, and supplements of the primary provider, applicant 2, staff members, or any residents of the home must be locked and inaccessible to children.

da. When away from the family child care home, the primary provider, applicant 2, equally qualified provider, qualified substitute, or staff members trained in administering medication the family child care home provider or staff must carry emergency medications.

1010. If a medication is expired or left over, parent(s) and or guardian(s) are responsible for picking up the medication. If the parent(s) and or guardian(s) do not respond, the family child care home medication shall be provider shall dispose disposed of in accordance with 6 CCR 1007-2, Part 1, Regulations Pertaining to Solid Waste sSites and Facilities (Sept. 30, 2023) and 6 CCR 1007-3, Parts 99 (June 30, 2018), 100 (July 15, 2020) and 260-165 (July 15, 2023), 266 (June 30, 2014), 267 (Apr. 14, 2021), and 268 (July 15, 2023), and Parts 99 and 100 and as required by the Colorado Department of Public Health and Environment (CDPHE) https://cdphe.colorado.gov/colorado-medication-take-back-program (2023), herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from CDPHE at https://www.sos.state.co.us/CCR. The recommendations are available at no cost from CDPHE at https://cdphe.colorado.gov/hm/prep-med-waste-disposal and https://cdphe.colorado.gov/colorado-medication-take-back-program. These regulations and recommendations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours .

5. Medication must be stored in a locked cabinet, cupboard, or locked box so that it is inaccessible to children. If refrigeration is required, it must be stored in a leak- proof container in a designated area of the refrigerator separated from food.

6. Medication must be administered, documented and disposed of in accordance with the State Department approved training in medication administration.

117. A written medication log must be kept for each child. This log is a part of the child's record. The log must contain the following:

a. Child's name and birthdate,;

b. Time medication was is supposed to be given according to the by written medication authorization;,

c. Name of the medication, dosage, and route;,

d. Time medication is actually administered to the child;

e. Special instructions;,

f. Name or initials of the individual giving the medication;, and

g. Notation if the medication was not given, and the reason.

12c. Topical preparations such as used for prevention on unbroken skin including, but not limited to, petroleum jelly, diaper rash ointments, sunscreen, and insect repellants, sprays, and other ointments may can be administered to childrensolely with written parent and/or guardian authorization. TheseTopical preparations may not be applied

toused as treatment on open wounds or broken skin unless there ismust have a written order from a prescribing health care provider in addition to parent authorization.

C. Children With Special Needs

1. The admission of children who have special health care needs, disabilities, or developmental delays which includes children with social emotional and behavioral needs must be in alignment with the training and ability of the primary provider, applicant 2, equally qualified provider, qualified substitute, or staff member, in compliance with the Americans With Disabilities Act. Services offered must show that a reasonable effort is made to accommodate the child's needs and to integrate the child with other children. (see rule section 2.119 in the General Rules for Child Care Facilities)

2. The family child care homeprimary provider must secure the services of a registered nurse, physician or Department-approved child care health consultant (CCHC) prior to the first day of care of the enrollment of a child with special health care needs that require delegation beyond routine medications, so the primary provider, applicant 2, equally qualified provider, qualified substitute, and or staff members can receive training, delegation, and supervision by the registered nurse, physician, or Ddepartment-approved CCHC as indicated by the child's individualized health care plan.

3. For a child with special health care needs requiring intervention and or medication, the primary provider must obtain written instructions for providing services from the child's parent or guardian, and the child's health care provider. If an existing individualized health care plan is provided for the child, it must be reviewed and followed by the primary provider, applicant 2, equally qualified provider, qualified substitute, and or staff members when caring for the child. If the child does not have an existing individualized health care plan, the individualized health care plan must be obtained by the child's first (1st) day of care.

4. For an enrolled child with a newly identified special health care need, the family child care home primary provider must obtain written instructions for providing services from the child's parent(s) or guardian(s) and the health care provider. If the child with special health care needs does not have an existing individualized health care plan, the individualized health care plan must be completed within thirty (30) calendar days of the child's identified need. For a life-threatening health care need, the health care plan and any associated medication(s) must be available prior to the child's re-admittance to the family child care home.

5 The individual health care plan must be updated at least every twelve (12) months from the date of the initial plan and as changes occur. The plan must include all information needed to care for the child, and must be signed by the health care provider, and the parent(s) or guardian(s). The plan must include if applicable, but not be limited to, the following:

a. Medication and dosing schedule;

b. Nutrition and feeding instructions;

c. Medical equipment or adaptive devices, including instructions;

d. Medical emergency instructions;

e. Toileting and personal hygiene instructions;

f. Behavioral interventions; and

g. Medical procedure/intervention orders.

E. Sun Protection

1. The family child care homeprimary provider must obtain written authorization and instructions from the parent(s) and or guardian(s) for the application of sunscreen or the use of another form of parent(s) and or guardian(s) approved sun protection with a full-spectrum UVA/UVB rating of SPF thirty (30) or greater to their children's exposed skin prior to outside play year-round. if the use of sunscreen is not included in the written policies and procedures statement. A doctor's permission is not needed to use sunscreen at the family child care home.The provider must inform the parent or guardian, through the policies and procedures statement or an authorization form, that sunscreen will be applied to the children's exposed skin prior to outside play. A doctor's permission is not needed to use sunscreen at the home. When a parent or guardian supplies sunscreen for an individual child, the container must be labeled with the child's first and last name. If sunscreen is provided by the provider, parents must be notified in advance, in writing, of the type of sunscreen the provider will use. Parent(s) or guardian(s) must notify the provider if sunscreen has been applied to the child's skin prior to arriving at the home. Sunscreen must never be applied to an infant's skin.

2. The family child care homeprimary provider, applicant 2, equally qualified provider, qualified substitutes, or staff members must apply sunscreen, have the parent(s) and/or guardian(s) apply sunscreen, or use another form of parent and or guardian approved sun protection for children prior to children going outside. Sunscreen must be reapplied as directed by the product label.

a. When the parent(s) and/or guardian(s) applyies sunscreen, the family child care home primary provider must have a mechanism for documenting application times to ensure sunscreen is reapplied as directed by the product label. If documentation of application time is not available, the provider must ensure that sunscreen is applied thirty (30) minutes before going outdoors. If the child will be outside for more than two (2) hours one (1) hour, sunscreen must be reapplied at least every two (2) hours or as directed by the product label.

3. When supplied for an individual child, the sunscreen must be labeled with the child's first and last name.

4. If sunscreen is provided by the family child care homeprimary provider, parent(s) and or guardian(s) must be notified in advance, in writing, of the type of sunscreen the family child care home primary provider will use.

52. Children over four (4) years of age may apply sunscreen to themselves under the direct supervision of the family child care homeprimary provider, applicant 2, equally qualified provider, qualified substitute, or staff member.

6. Sunscreen must not be applied to infants under six (6) months of age. Infants under six (6) months must be kept out of direct sunlight while outdoors.

3. Sunscreen used must be full spectrum UVA/UVB with an SPF of thirty or greater and applied according to manufacturer's instructions.

CHILD CARE SERVICES

2.3222B . EMERGENCY MEDICAL CARE

A1. The provider must obtain written authority to arrange for emergency medical care for each child. Written authorization to obtain emergency medical care must be on file prior to or on the first day of admission and must be re-authorized annually. In the event of injury or illness, the affected child must be separated from the other children in the room or area where child care is being provided and made as comfortable as possible. First Aaid care must be provided as required. If additional care, medical attention, or removal from the family child care home is indicated, the child's parent(s) or guardian(s) must be contacted by telephone, if possible, and medical assistance obtained without undue delay.

B2. F. First Aid SuppliesA first aid kitSupplies must be maintained and stored in an area inaccessible to children. Supplies mustshall include band aids, adhesive tape, cold pack, gauze pads, rolled gauze, plastic bags, disposable gloves, and compression bandages, scissors, masks, and a mechanism for cleaning hands in a remote location.

1. Portable first aid kits must be available to staff members at all times, including field trips and short excursions, and must be checked and restocked on at least a monthly basis.

2. Expired first aid supplies and equipment must be discarded and replaced.

2.3233D. CONTROL OF COMMUNICABLE ILLNESS

A1. When a child in care, resident of the family child care home, or family child care home primary provider, equally qualified provider, or any staff member has been diagnosed with a reportable communicable illness, or when an outbreak of illness occurs, including, but not limited to, chicken pox, COVID-19, hepatitis A, measles, mumps, meningitis, diphtheria, rubella, salmonella, giardia, tuberculosis, shiga toxin-producing E. coli, and shigella, the provider must immediately notify the parents or guardians of all children in care and report the diagnosis to the local county department of health or the Colorado Department of Public Health and Environment. The complete list of reportable communicable illnesses can be found in 6 CCR 1009-1 (Apr. 19. 2023), Rrules and rRegulations rPertainingpertaining to Epidemic and Communicable Disease Control, herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the Colorado Department of Public Health and Environment at http://sos.state.co.us/ccr. These regulations are also available for public inspection and copying at the Department at 710 S. Ash St., Denver, CO 80246, during normal business hours.

B2. Any residents of the family child care home, primary provider, applicant 2, equally qualified providers, qualified substitutes, staff members, and children in care individual diagnosed with a reportable communicable illness must be excluded from contact with children in care at the family child care home for a period of time determined by the diagnosed individual's health care provider or by the local health department.

C. One room or area in the family child care home, within sight or sound of the family child care home primary provider, applicant 2, equally qualified provider, or qualified substitute, that contains a bed, cot, or sofa must be available for a child in the event of an illness or injury where a child can be separated from other children and comfortably cared for. A crib or playpen with a pad must be provided for children under twelve (12) months of age. A clean, washable sheet and blanket must be provided for each child over (12) months, and must be cleaned and changed after each use by a sick or injured child.

D. Family child care homePrimary providers, applicant 2, equally qualified providers, qualified substitutes, and staff members must be in good health and free from communicable diseases

while caring for children, preparing food, or employed in any capacity where there is a likelihood of transmitting disease to others in the family child care home.

E. Residents of the family child care home with symptoms of illness must be kept separate from the family child care home primary provider, applicant 2, equally qualified providers, qualified substitutes, staff members, and children in care.

2.3247.707.72 PERSONAL HYGIENE, HAND WASHING AND BATHING, DIAPERING AND TOILETING, AND CLEANING TOYS

A. Hand Washing and Bathing

1. Family child care homePrimary providers, applicant 2, equally qualified providers, qualified substitutes, staff members, and children must wash their hands using the following procedures:

a. Moisten hands with warm running water;

b. Apply soap;

c. Rub hands vigorously until a soapy lather appears;

d. Continue washing for at least twenty (20) seconds outside of the water, rubbing areas between fingers, around nail beds, under fingernails, under jewelry and the backs of hands;

e. Rinse hands under warm running water until they are free of soap and dirt; and

f. Dry hands with a disposable towel, a clean cloth towel laundered after use, or a mechanical drying device.

2. Family child care homePrimary providers, applicant 2, equally qualified providers, qualified substitutes, staff members, and children toddler-aged and older must wash their hands at the following times:

a. Upon arrival for the day;

b. Before and after:

1) Preparing food or beverages;

2) Eating, handling food, or feeding a child;

3) Giving medication, applying a medical ointment or cream, or administering first aid; and

4) Setup or use of sensory materials.

c. After:

1) Using the toilet or assisting a child with toileting;

2) Diapering each child;

3) Handling body fluids;

4) Handling animals or cleaning up animal waste;

5) Coming in from outdoors;

6) Cleaning or handling garbage; and

7) At any other time the hands become soiled.

3. Infants must have their hands washed with:

a. Soap and running water;

b. A clean cloth that contains soap and is laundered after each use; or

c. The use of soap and warm water solution dispensed from a clean spray bottle, followed by a rinse before drying with a clean cloth or disposable towel.

4. Infants hands must be washed:

a. Before and after meals and snacks; and

b. After:

1) Having their diaper changed;

2) Coming in from outdoors; and

3) Whenever their hands become soiled.

~~1. All providers must wash their hands thoroughly with soap under warm running water, when available, and dry with an individual use and/or single use disposable towel before preparing, serving, and eating food; before administering medication; after helping a child with toileting or diapering; after provider's own toileting; after wiping a child's nose; whenever possible on field trips, at a park, or at another location away from the home; after handling animals, their toys, or food and water bowls; after contact with bodily fluids or secretions; and, any other time the hands become soiled or contaminated.~~

~~2. All children must wash their hands thoroughly with soap under warm running water, when available, and dry with an individual use and/or single use disposable towel; before preparing and eating food; after toileting or diapering; after wiping his/her nose; whenever possible on field trips, at a park, or at another location away from the home; after handling animals, their toys, or food and water bowls; after contact with bodily fluids or secretions; and, any other time the hands become soiled or contaminated.~~

5~~3~~. ~~The~~ Hand washing area~~s~~ should promote self-help skills to include, but not be limited to, sturdy and age-appropriate step stools, soap, and single-use or disposable towels accessible to children.

~~4. If paper towels are not used, each child shall have an assigned towel that is used consistently, doesn't touch other towels, and is laundered weekly or more often if needed.~~

6. Hand washing areas shall be routinely disinfected when visibly dirty or ~~prior to use~~after any use of the ~~area~~area for tasks other than ~~different from~~ hand washing.

7. Hand sanitizers and wipes are not acceptable alternatives to hand washing, except on outings where running water may be unavailable. Alcohol based hand sanitizers shall not be used for children under three (3) years of age.

8. When a child is bathing, the bath water must be between ninety (90) and one hundred and twenty (1200) degrees. Children under five (5) years of age must not be left unattended while being bathed. For children over five (5) years of age, primary providers or staff members must periodically check on the child and be able to hear children at all times while bathing.

9. If towels are used for bathing or recreational activities, each child must have an assigned towel that is used consistently, doesn't touch other towels, and is laundered weekly or more often if needed.

105. Children's towels and drinking cups must not be shared.

B. Diapering and Toileting

1. The family child care home must comply with the following for toileting needs:

   a. Toilets must be flushed between uses;

   b. Non-flushing toilets are prohibited; and

   c. Toilet inserts must be disinfected after each use.

2. The family child care home must have a designated diaper change area for all children in need of diaper changing. The diaper change area must:

   a. Have a smooth, durable, nonabsorbent, and easily cleanable surface; and

   b. Be large enough to accommodate the size of the child being changed;.

   c. Be located to the closest handwashing sink that is not used for food preparation;

3. The following procedure must be followed each time a diaper is changed:

   a. Diapers must be checked for wetness or feces at least every two (2) hours, or whenever the child indicates discomfort or exhibits behavior that suggests a soiled or wet diaper. Soiled or wet diapers and clothing must be changed promptly and be replaced with clean diapers and clothing whenever necessary;

   b. Children being diapered must be within arm's reach of the provider or staff member and actively supervised throughout the diapering process;

   c. All supplies needed for diaper changing must be placed at the diaper changing area before the child is brought to the changing area;

   db. The child must be placed on a clean, disinfectedsanitized, dry changing table or mat;

   ec. Family child care homePrimary providers, applicant 2, equally qualified providers, qualified substitutes, and staff members must use single use disposable gloves;

fd. Use closest hand washing sink to the diaper changing area that is not used for food preparation;

ge. Children's hands must be washed with soap and water after diapering;

hf. Family child care home Primary providers, applicant 2, equally qualified providers, qualified substitutes, and staff members providers must clean and disinfect the diaper changing area after each diaper change;

ig. Primary providers, applicant 2, equally qualified providers, qualified substitutes, and staff members Family child care home providers must vigorously clean all parts of their hands with soap and warm running water and dry their hands with single-use or disposable individual paper or cloth towels after diapering each child;

jh. During child care hours, clothing soiled by bodily fluids must be placed in a leak proof container. The container must be stored inaccessible to children and sent home on a daily basis;

ki. Parent(s) or provider(s) must provide extra clothing; and

lj. For each child who is learning to use a toilet, the Pprimary provider family child care home provider must accommodate the child's individual developmental abilities and needs, in accordance with nationally recommended procedures, and as contained in the provider's written policies and procedures;

k. Toilets must be flushed between uses; and

l. If potty chairs are used, all parts of the potty chair must be disinfected immediately after each use.

C. Cleaning Toys

1. Toys that are not mouthed or otherwise contaminated by body fluids mustshall be cleaned and sanitized at least once a week and whenever visibly soiled.

2. Toys that are placed in children's mouths or are otherwise contaminated by body fluids mustshall be cleaned and sanitized prior to use by another child.

3. Toys that are contaminated by feces, urine, vomit, blood, or other bodily fluids with blood must be cleaned and disinfected.

4. Toys, tables, or any item that cwould be placed in children's mouths must be rinsed after disinfection.

7.707.73 FOOD AND NUTRITION

2.325 MEALS AND SNACKS PROVIDED BY THE PROVIDER

A. All meals and snacks provided by the primary provider, applicant 2, equally qualified providers, qualified substitutes, and staff members must meet current United States Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) meal pattern guidance and requirements published by the USDA Food Nutrition Service at https://www.cacfp.org/meal-pattern-guidance/ (April 2016) and 7 C.F.R. sectionsSS 210.10 and 226.20 (July 1, 2022), herein incorporated by reference. No later editions or amendments are incorporated and be offered at

suitable intervals. These regulations are available at no cost from the USDA Food Nutrition Service at https://www.ecfr.gov. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours. Children who are at the fFamily Cchild Ccare home for more than four (4) hours, day or evening, must be offered a meal.A nutritious snack or meal must be offered during the midmorning and mid-afternoon hours. A mid-day meal must also be provided and must meet at least one-third (1/3) of the child's daily nutritional needs as required by the USDA child and adult care food program meal pattern requirements. Arrangements must be made for feeding children who are in care before 6 a.m. or after 6 p.m.

B. Food must be offered to children when they are awake at intervals not more than three hours apart.

C. Food must be wholesome and nutritious and stored in a safe and sanitary manner. A wide variety of foods, including fresh fruits and vegetables and whole grain products must be provided to children to ensure adequate intake of dietary fiber, vitamins, minerals, and other important nutrients.

D. If the provider does not regularly provide meals, the provider must supplement children's meals that are inadequate with foods to meet the nationally recognized meal pattern requirements.

BE. Family child care homePrimary provider(s) and parent(s) must have ongoing communication regarding special diet and feeding needs of the child(ren).

C. All parents must have access to menus and must be notified of meals being served.

1. All substitutions must be compliant with dietary restrictions and or food allergies.

2. All substitutions must be documented.

DL. Food must be offered to the child from the child's individual dish and utensil(s). If uneaten portion(s) from the child's plate are saved, they must be refrigerated and stored safely and must be served, eaten, or discarded within four (4) hours of being prepared. Uneaten portions from one child must not be given to another child; children must not share dishes and/or utensil(s).

EN. Dishes, cookware, high chair trays and utensils must be washed, sanitized, and stored in a safe and sanitary manner. When used, disposable dishes and utensils must be disposed of after use. Food preparation and service areas including, but not limited to, sinks, faucets, counters, and tables must be sanitarysanitized.

FI. All milk and juice offered to children must be pasteurized.

G. Children are encouraged, but must not be forced, to eat food or drink fluids.

HF. Foods offered shall be age appropriate and not pose a choking hazard.

H. Children with special needs are included in regular meal areas and routines.

HI. If 100% fruit juice, which is not a sugar sweetened beverage, is offered as part of meals and/or snacks, it must be limited to no more than two (2) times per week.

IJ. Family child care homePrimary providers, applicant 2, equally qualified providers, qualified substitutes, and staff members must not provide sugar sweetened beverages to children. These

are beverages that have been sweetened with various forms of sugars that add calories and include, but are not limited to: soda, fruitades, fruit drinks, flavored milks, and sports and energy drinks.

J. Juice must be limited to one (1) serving a day. Sweet type foods must be limited to no more than two (2) servings per week.

KJK. Water must be offered and available at all times and cannot be a substitute for milk during meals.

LK. The size of servings must be suitable for the child's age and sufficient time must be allowed so that meals are unhurried'

M If the family child care homeprimary provider does not regularly provide a meal, if and a child brings a meal from home that does not appear to meet current USDA Child and Adult Care Food Program meal pattern requirements, the family child care homeprimary provider must have foods available to offer as a supplement to that meal.

N. During meals, children should be encouraged to engage in conversation and to express their independence.

O.M. Children must not be given foods that are contrary to the religious or cultural beliefs of their families or that are known to cause an allergic reaction or a health hazard.

P. Food and beverages are not to be used as a reward.

Q. Family child care providers must not serve grain-based desserts to children more than two servings per week. These desserts include but are not limited to: cookies, donuts, cereal bars, cake, and brownies.

R. All children must be sitting when eating.

S. Children under the age of eighteen (18) months must be sitting or standing stationary while drinking.

T. Family child care home Primary providers, applicant 2, equally qualified providers, qualified substitutes, or staff members must either feed children under three (3) years of age or supervise them when they are eating.

U. Children who are actively eating may be in a highchair or other approved feeding equipment for longer than fifteen (15) minutes. Children must be moved away from the feeding location once feeding is complete. Older children must be allowed to leave the feeding location once they are finished eating.

2.326O. FEEDING THE INFANTSBottles and Formula

A1. An individualized diet and feeding schedule must be provided in a written plan submitted by the parent(s) or guardians(s), or by the child's physician with the knowledge and consent of the parent. Any change of diet and schedule must be communicated to the primary provider prior to implementing a new diet or schedule. to staff and parent(s) or guardian(s) prior to the family child care home implementing a new diet or schedule.

B. Bottles of milk, formula, or breast milk must never be warmed or thawed in a microwave oven. Infant formula and breast milk cannot be reused. If a child does not finish the bottle of formula or breast milk within one (1) hour, the contents must be thrown out.

C2. If the infant is breast fed, the provider must not offer formula, water, or other liquids without discussing substitutions or supplementation with the infant's parent(s) or guardian(s).

D3. The family child care homeprimary provider must make an area in the home available for a breast feeding mother to breast feed her infant while visiting the home during business hours.

E4. All infants less than six (6) months of age unable to hold their own bottles must be held by the provider duringfor bottle feedings and should be held so they can see the face of the family child care home primary provider, applicant 2, equally qualified provider, qualified substitute, or staff member if it is appropriate for the child. Bottles must not be propped.

F5. Infants over six (6) months of age must not be allowed to hold their own bottles when lying flat. Infants and toddlers must not be allowed to hold their own bottles or sippie cups when lying flat to prevent choking, ear infections, bottle mouth or tooth decay.

G. Bottles must not be allowed in sleep equipment with the infant.

H6. There must be a sufficient supply of bottles provided for the entire day; or, if bottles are to be reused, they must be washed, rinsed, and sanitized after each use.

I. Family child care homePrimary providers, applicant 2, equally qualified providers, qualified substitutes, or staff members may not mix cereal with breast milk or formula and feed it to an infant from a bottle or infant feeder unless there are written instructions from the child's health care provider.

J7. Commercially prepared formula must be mixed in accordance with the directions of the manufacturer or written instructions from the child's health care provider.

K8. Each bottle must be marked with the child''s name when there is more than one (1) child in care that drinks from a bottle.

P. Solid Foods

L1. At a minimum, meals and snacks provided for infants under the age of one (1) year must contain the foods listed in the United States Department of Agriculture's (USDA) child and adult care food program meal pattern for infants, found in "Feeding Infants in the Child and Adult Care Food Program guide (July 2021), herein incorporated by reference. This guide is available for no cost from the USDA at https://fns-prod.azureedge.us/sites/default/files/resource-files/FI_FullGuide_2021.pdf. The guide is also available for inspection and copying from the Department at 710 S. Ash St., Denver, CO 80246, during regular business hours.

M2. Foods must be appropriate for infants' developmental stages as determined by instructions obtained from the infant's parent(s), guardian(s), or health care provider.

N3. No new foods mustshall not be introduced to children under twelve (12) months of age without parent(s)al or guardian(s) permission.

O. Infants who are eating solid foods mustshall be provided with suitable solid foodsdevelopmentally appropriate solid foods that encourage freedom in self-feeding and must be fed in safe chairs such as highchairs.

P. When the family child care home primary provider, applicant 2, equally qualified provider, qualified substitute, or staff member provides food other than breast milk or formula, food must be varied and include food from cereal, vegetable, fruit, and protein sources. When the parent(s) or

guardian(s) provide solid food, the provider must supply any additional foods as needed and/or monitor the infant's total nutritional intake.

Q. Children who are actively eating may be in a highchair or other approved feeding equipment for longer than fifteen (15) minutes. Children must be moved once feeding is complete.

5. Provider(s) must either feed infants and toddlers or directly supervise them while they are eating.

R6. Honey and products containing honey must never be served to infants under twelve (12) months of age.

7.707.74 Direct CARE OF CHILDREN

2.327 7.707.741 SUPERVISION

A. The primary family child care home provider, applicant 2, equally qualified providers, and/or qualified substitutes must supervise all children by sight and or sound and know the location and the activity of all children, both indoors and outdoors, at all times while they are in care.

B. All children in care, including the family child care home primary provider's, or applicant 2's own children under the age of ten (10), must only be cared for in areas approvedlicensed by the Department for child care use. by the Department.

CB. The family child care homeprimary provider's and applicant 2's own children who are age ten (10)twelve (12) years of age up to sixteen (16) years if age and olderand over may each have one (1) friend over during child care hours if the following conditions are met:

1. The visiting children are not present for supervision; and,

2. The visiting children can immediately be sent home if needed; and,

3. The visiting children must be age ten (10) years to sixteen (16)twelve (12) years or over; and,

4. Visiting children must not neither compromise nor participate in the care orand supervision of children.

D. The family child care homeprimary provider's and applicant 2's own children over the age of sixteen (16) years of age and older may have more than one (1) friend over during child care hours if the following conditions are met:

1. The visiting children must be over the age of sixteen (16) years of age;

2. The visiting children are not present for supervision;

3. The visiting children can immediately be sent home if needed;

4. Visiting children must notneither compromise nor participate in the supervision or care of children;

5. Visiting children over the age of sixteen (16) years of age cannot have unsupervised access to children in care.

EC. The family child care homeprimary provider and applicant 2 may have other children over on occasionperiodically if the following conditions have been met:

1. The visiting children are under the active supervision of their parent(s) or guardian(s) or their own child care providers; and,

2. The square footage requirements for the family child care home accommodates all children present.

2.328 7.707.742 PHYSICAL CARE

A. Children must be provided a developmentally appropriate environment.

B. The Family child care homeprimary provider(s), applicant 2, equally qualified provider, qualified substitute, and all staff members must provide for children's appropriate care and well-being, taking into consideration the individual needs of each child.

C. Throughout the day, each child must have frequent, individual personal contact and attention from the family child care home primary provider, applicant 2, equally qualified provider, qualified substitute, and staff members(s)an adult, such as being held, rocked, taken on walks inside and outside the family child care home, talked to, read to, and sung to.

D. Infants in care who are unable to hold a bottle must be held during bottle feedings.

DE. Infants must be held frequently while in care.

EF. The primary provider, applicant 2, equally qualified provider, qualified substitute, and staff members Family child care home provider(s) must pick-up children appropriately around their upper chest and under their arms, and based on the developmental needs of the child.

FG. Children leaving the family child care home for school or other activities must be dressed appropriately to protect the health and safety of children for the weather.

GH. The Famiprimary provider, applicant 2, equally qualified provider, qualified substitute, and staff members ly child care home provider(s) must respond promptly to the needs of a child, including, but not limited to: crying, toileting, hunger, and thirst. The timing of the response must not result in physical harm to the child.

HI. The primary provider, applicant 2, equally qualified provider, qualified substitute, and staff members Family child care home providers must investigate whenever children cry and must try to verbally or physically soothe the child.

IJ. The primary provider, applicant 2, equally qualified provider, qualified substitute, and staff members Family child care home providers must develop/provide an environment that minimizes the risk to children from hurting themselves or each other.

JK. Greetings/Departures

1. Children should be greeted individually and pleasantly upon arrival and departure.

2. Parent(s) or guardian(s) shall be allowed access to their children and all approved and licensed areas at all times.

3. When necessary, upon arrival and departure, the parent(s) or guardian(s) and family child care home provider primary provider, applicant 2, equally qualified provider, or qualified substitute mustshall share information related to the child's health, and safety, and overall well-being including, but not limited to, special diets, accident reports, specific fears, and family traumas.

KL. The Family child care homeprimary providers, applicant 2, equally qualified providers, qualified substitutes, and all staff members, must not use any substance that impairs their ability to care for children, or be under the influence of any controlled substance or consume any alcoholic beverage during the operating hours of the family child care homefacility or be under the influence of a controlled substance or alcoholic beverage during the operating hours of the facility, or use any substance that impairs their ability to care for children.

LM. The Family child care homeprimary providers, applicant 2, equally qualified providers, qualified substitutes, all staff members, substitutes, visitors, volunteers, and residents of the family child care primary provider and applicant 2's home provider's home who consume or are under the influence of any controlled substances or alcohol are not permitted to work with children or be in the area used for child care during business hours.

MN. Illegal drugs or paraphernalia must never be present on the premises of the family child care home.

2.3297.707.75 SLEEP AND WAKING TIME

A. Children must be allowed to form and observe their own pattern of sleep and waking periods. Provision must be made so that children requiring a nap time have a separate area for their nap away from other children currently playing.

B. Children who are awake must not be confined for more than fifteen (15)thirty (30) minutes at a time to cribs, high chairs (unless they are eating), swings, playpens, or other equipment that inhibit freedom of movement, unless they are eating. Confinement must never be used as a form of discipline. They Children must have an opportunity each day for freedom of gross motor movement, such as creeping, crawling, or walking in a safe, clean open, uncluttered area.

C. The provider mustEach provide a rest period for all preschool-age children remaining in the family child care home for longer than five (5)four (4) hours must be provided a rest period. A rest period and rest equipment must also be provided for older children who require a rest time.

D. Rest or sleep periods must be scheduled appropriately for the age and development of the child(ren) and not forced. Children who do not sleep after thirty (30) minutes must be provided with developmentally appropriate alternative activities. Infants and Toddlers who fall asleep must immediately be moved tomust be placed in their approvedCPSC compliant sleeping equipment, incorporated by reference in rule section 2.329(H)(1), within ten (10) minutes of falling asleep, unless being held by the family child care homeprimary provider, applicant 2, equally qualified provider, qualified substitute, or staff member while being transported, or on a field trip, or if children are not at the provider's home.

E. Toddlers, preschoolers, and older children, as necessary, must have a suitable mat at leastnot less than two inches thick, cot, bed, or sofa, with a clean washable sheet and blanket or other suitable covering that has been launderedsanitized between uses by different children. Children must be provided with a clean blanket.

F. During rest/nap time the primary provider, applicant 2, equally qualified provider, qualified substitute, and all staff members must remain alert and supervise all children by sight or sound. The atmosphere should be calm and conducive to rest or sleep.

G. The atmosphere should be calm and conducive to rest or sleep. The lighting must be dim at nap time but must be bright enough for supervision of children. Safe Sleep Training for Family Child Care Staff

All staff who work with infants must complete Department-approved safe sleep training prior to working with infants and on an annual basis

H. Safe Sleep Environments for Infants

1. Each infant up to twelve (12) months of age must be provided with an individual crib or futon approved for infants or other approved sleep/rest equipment meeting Consumer Product Safety Commission (CPSC) standards published by the Consumer Product Safety Commission (CPSC) at 16 CFR § 1218.2 (April 23, 2015); 16 CFR § 1219.2 (October 28, 2019); 16 CFR § 1220.2 (June 3, 2023); 16 CFR § 1221.2 (January 20, 2020); 16 CFR § 1222.2 (August 5, 2023); 16 C.F.R. § 1236.2 (June 23, 2022), and 16 C.F.R 1241.2 (February 15, 2022) herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the CPSC at https://www.ecfr.gov. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours. located at 16 CFR Parts 1218-1222 (June 23, 2022), herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the CPSC at https://www.ecfr.gov/. These regulations are also available for inspection and copying at the Department, 710 S. Ash St., Denver, CO 80246, during normal business hours. Approved sleep equipment must provide each infant with sufficient space for the infant's length, size, and movement.

   a. Other sleep equipment not manufactured for commercial use is prohibited.

2. In the infant room, Soft bedding or materials that could pose a suffocation hazard are not permitted in cribs, futons approved for infants, or other approved sleep/rest equipment that meets the CPSC standards incorporated by referenced in rule subsection (1), above2.329.A.

   Soft bedding means, but is not limited to; any soft sleep surface like bumper pads, pillows, blankets, quilts, comforters, sleep positioning devices, sheepskins, blankets, flat sheets, cloth diapers, bibs, plush toys, pacifiers with stuffed animals attached, and stuffed animals.

   a. Mattresses for cribs and futons must have a properly fitted, clean sheet.

3. Infants must be placed on their back for sleeping. Infants who by their own ability roll onto their stomach do not need to be returned to their back.

4. Alternative sleep positions for infants must only be allowed with a health care plan completed and signed by the child's physician.

5. Swaddling of infants must only be allowed with a health care plan completed and signed by the child's physician.

6. Each infant up to twelve (12) months of age who uses a pacifier must have the pacifier offered when being put down to sleep, unless the parent directs otherwise.

7. All sleep/rest equipment must be safe, sturdy, and free from hazards including, but not limited to: broken or loose slats, torn mattress, chipping paint, or and loose screws.

8. Approved sleeping equipment mattresses meeting Consumer Product Safety Commission (CPSC) standards incorporated by referenced in rule section 2.329(.A). must be firm and must fit snugly ensuring no more than two adult fingers are able to be

inserted between the mattress and the side of the approved CPSC compliant sleeping equipment, incorporated by reference in rule section subsection (1), above2.329(.A).

9. Toys, including mobiles and other types of play equipment that are designed to be attached to any part of sleeping equipment must be kept away from sleeping infants and out of sleep environments, including hanging toys. Blankets and other items must not be hung from or draped over the sides or any part of sleeping equipment.

10. Drop side and stacking cribs are prohibited.

11. Infant sound monitors must be used when infants are sleeping in a separate room out of the direct supervision of the primary caregiver. When in use, infant sound monitors must meet the following conditions:

    a. The sound monitoring equipment must be able to pick up the sounds of all sleeping infants;

    b. The receiver of the sound monitoring equipment must be actively monitored by the primary provider or staff member at all times;

    c. All sleeping infants must be physically observed at least every ten (10) minutes by the primary provider or a staff member; and

    d. Sound monitoring equipment must be regularly checked to ensure it is working correctly; and.

    e. The monitor must be out of reach of children.

12. Infants who fall asleep in a piece of equipment not approved for sleep must immediately be moved to their approved sleep equipment meeting Consumer Product Safety Commission (CPSC) standards, incorporated by reference in rule section subsection (1), above2.329(.A), and placed on their back to sleep unless being held by the provider, while being transported, or on a field tripin a car safety seat, bean bag chair, bouncy seat, infant seat, swing, jumping chair, play pen or play yard, highchair, chair, sofa, adult futon, adult bed or ANY other piece of equipment not approved for sleep must immediately be moved to their approved sleep area and placed on their back to sleep.

13. Cribs must be used for sleeping, not extended play or confinement.

14. Children who are awake must not be confined for more than fifteen (15) minutes at a time to cribs, playpens, swings, high chairs, infant seats, or other equipment that inhibits freedom of movement. Children who are actively eating may be in a high chair or other approved feeding equipment for longer than fifteen (15) minutes. Children must be moved once feeding is complete.

145. If music is played in the infant sleep area, the music must not be played at a loud volume that would prevent infants from being heard by the family child care homeprimary provider, applicant 2, equally qualified provider, or staff member providercaregiver(s). Music equipment must not be placed under a crib or within three (3) feet of the sleeping infant.

156. Supervised tummy time must be offered to infants one (1) month of age or older at least four (4) times per day, for full--day family child care homes. The tummy time must be for short periods of three-five (3-5) minutes, and increaseincreasing the amount of time as the infant shows they enjoy the activityup to twenty to thirty (20-30) minutes per day. If

the infant falls asleep during tummy time, immediately place the infanthim/her on their back in approved CPSC compliant sleeping equipment, incorporated by reference in rule section subsection (1) above2.329(.A).

167. When the primary provider, applicant 2, equally qualified provider, or staff member family child care home providercaregiver places infants in approved sleeping equipment for sleep, they must check to ensure that the temperature in the room is comfortable for a lightly clothed adult, check the infants to ensure that they are comfortably clothed (not overheated or sweaty), and that bibs, necklaces, and garments with ties or hoods are removed. Clothing sacks or other clothing designed for sleep must be used in lieu of blankets if needed for additional warmth.

a. Clothing sacks or other clothing designed for sleep must be worn in lieu of blankets if needed for additional warmth. Sleep sacks or clothing that swaddles the infant, restricts movement of the child's arms or legs, that are too big for the infant, weighted, or not used in the manner the manufacturer intends are prohibited.

178. Infants must not be placed to sleep in the same crib or futon as another infant or child., and A child must never sleep with an adult in a bed, on a couch, or in any other setting or manner.

I. The facility must have policies, and ensure they are followed for safe sleep environments for infants.

J. The facility must have a policy, and ensure it is followed on the protection of infants from second hand smoke.

2.3307.707.76 OVERNIGHT CARE

A. Regular overnight care (care that past midnight) of children is permitted only when approved by the Departmentlicensed to do so.

B. All children in care must be provided with a comfortable cot, crib, bed, or couch suitable for the child"s age, a bottom and a top sheet two (2) sheets, and a suitable warm covering. At least forty (40) square feet of floor space must be available for each bed. Beds arranged in parallel must be at least two (2) feet apart.

C. Sheets must be changed weekly, between use by different persons, and more frequently if needed. The family child care home No provider must notshall knowingly allow a child to sleep in a wet bed.

D. Children's faces and hands must be washed, teeth brushed, and children must change into comfortable clothing for sleeping. Extra sleepwear must be available in the event that a change is necessary.

E. When the provider goes to sleep, The primary provider, applicant 2, equally qualified providers, or qualified substitute family child care home provider must sleep on the same level of the home where children under eight (8) years of age are sleeping.

F. Written permission must be obtained from parent(s) or guardian(s) approvingon where the child sleeps, whether the child shares a room with another individual, and the child's sleep equipment that the child is sleeping on.

G. Screen time, which includes television, recorded media, computer, tablet, cell phones, video games, and other media devices, must be turned off at least one (1) hour before bedtime.

7.707.8 GUIDANCE, LEARNING ACTIVITIES, MATERIALS AND MEDIA USE

2.3317.707.81 GUIDANCE

A. At the time of admission, the family child care homeprimary provider mustshall discuss with the parent(s) or guardian(s) the family child care home's guidance expectations and consequences of a child's behavior.

B. Guidance used at the family child care home must be developmentally appropriate to the age of the child and is used as an opportunity to teach children social-emotional skills, such as self-regulation, problem-solving, and empathy for others. Guidance must be appropriate to the developmental age of child, constructive or educational in nature, and may include such measures as diversion, separation, talking with the child about the situation, praise for appropriate behavior, and gentle holding.

C. Children must not be subjected to physical or emotional harm or humiliation. The family child care homeprimary provider must not use, or permit anyone else to use, corporal punishment as defined in section 22-1-140, C.R.S or other harsh punishment, including, but not limited to pinching, shaking, spanking, punching, biting, kicking, rough handling, hair pulling, or any humiliating or frightening method of discipline.

D. Physical, mechanical, and chemical restraint shall never be used.

E. Guidance must not be associated with food, rest or toileting. Children must not be punished for not resting or sleeping, toileting accidents, failure to eat all or part of meals or snacks, or failure to complete an activity. Food or drink may must not be denied or forced upon children as a disciplinary measure.

F. Meals and snacks can be temporarily postponed or provided individually, but deprivation of meals, snacks, and beverages must not be used as punishment.

G. Separation, when used as guidance, must be brief and appropriate for the child's age and circumstances. The child must be in a safe, lighted, well-ventilated room within the hearing and vision of the primary provider, applicant 2, or staff members or other qualified adult. Children must never be isolated in a locked room, attic or closet area.

H. Verbal or emotional abuse and derogatory remarks about any child and/or any child's family and home environment is prohibited.

I. The family child care home primary provider, applicant 2, equally qualified provider, or qualified substitutes or approved substitute isare responsible for and shall supervise all guidance used within the family child care home. The family child care homeprimary, applicant 2, equally qualified provide, or qualified substitutes provider must not allow one child to punish another child.

J. A child must not be punished for the actions of a parent(s) or guardian(s). This includes, but is not limited to, failure to pay fees, failure to provide appropriate clothing, failure to provide materials for an activity, or any conflict between the provider and the parent(s) or guardian(s).

K. Physical redirection may be used to keep a child from immediate imminent danger. The child must be immediately released once removed from imminent danger.

2.3327.707.82 LEARNING ACTIVITIES

A. The primary providers, applicant 2, equally qualified providers, qualified substitutes, and staff members family child care home provider must talk and interact with children throughout the day. Corrective or controlling speech must be limited. Talking with children is generally social and not limited to only custodial or control speech.

B. Children must be encouraged to relate, interact, and/or to communicate with each other and with adults using developmentally appropriate behavior.

C. Primary providers, applicant 2, equally qualified providers, qualified substitutes, and staff members Family child care home provider(s) mustshall respond to children's attempts to communicate, in a postivepositiveusing culturally sensitive mannereye contact and makemaking an effort to create two-way conversation.

D. Each child in care must be provided with an opportunity for both group and individual play.

E. Primary providers, applicant 2, equally qualified providers, qualified substitutes, and staff members The family child care home provider mustshall encourage individual expression and adult directed projects mustshall be kept to a minimum, allowingsince children's work to beis varied and individual.

F. Children mustshall not be forced to participate in activities; alternate developmentally appropriate activities mustshall always be available.

G. Activities must be available to the children that are culturally sensitive and represent diversity in ethnicity, race, gender, and age, and abilities. Variety shall exist in toys, books, and pictures.

H. Children mustBoys and girls should not be restricted to specific gender roles in play.

I. Family child care home At least one (1) provider-initiated language activity mustshall be offered daily, such as reading, storytelling, flannel boards, or puppetry.

J. The family child care home primary provider(s) shall initiate at least one (1) interactive musical activity weekly, such as singing, dancing, playing instruments, marching, listening to tapes or recordings, radios, and musical videos.

2.3337.707.83 MATERIALS

A. A selection of at least five (5)four (4) books must be available for the group of infants/toddlers in care.

B. A selection of at least ten (10) books must be available for all children over two (2) years of age in care and must be organized and accessible to children most of the day. If children over five (5) years of age are in care, books relevant to theat age of the child must be included within the ten (10) books.

C. At least three (3) materials must be available to the children that are developmentally appropriate, culturally sensitive, and represent diversity in ethnicity, race, gender, and age, and abilities. Variety mustshall exist in toys, books, and pictures.

D. At least five (5) types offour (4) language development materials appropriate language materials to age of the children shallmust be available, such as toy telephones, puppets, story boards, dolls, and pictures and chalk boards.

E. At least five (5) four (4) types of age-appropriate fine motoreye-hand materials mustshall be available for use daily which should include at least some of the following: crayons, paper, scissors, non-chokable small building toys, developmentally appropriate multi-size stringing beads, pegs, sewing cards, and puzzles.

F. Age-appropriate blocks and accessories mustshall be accessible for free play daily allowing at least two (2) children to play independently, yet simultaneously.

G. At selection of at least five (5)four (4) types of developmentally appropriate nature or science related games, materials, or activities mustshall be available, such as: natural object collections, plants, gardens, pets, magnets, magnifying glasses, and/or science props.

H. At least five (5)four (4) types of developmentally appropriate math or number materials mustshall be available: counting objects, balance scales, rulers, number puzzles, magnetic numbers, and dominoes.

I. At least five (5)four (4) types of art materials mustshall be available, such as: crayons, pencils, markers, paints, play dough, scissors, and glue. Some art materials must be readily available each day.

J. Glitter must not be used with children under three (3) years of age.

KJ. At least five (5)four (4) types of dramatic play materials shall be accessible for free play daily such as: backpacks, purses, hats, dress up clothing, housekeeping toys, dolls and accessories, toy telephones, play houses, toy animals, cars and trucks, costumes, and safe jewelry.

LK. Outdoor physical free play materials mustshall consist of at least five (5)four (4) age appropriate toys and equipment including, but not limited to, the following in good repair, such as: push toys, riding toys, tossing toys, climbing equipment, balance boards, stationary swings, slides, balls, toss games, and sports equipment. These must be provided daily except in extreme weather, such as rain, snow, or extreme temperatures when indoor physical play may be substituted.

ML. Materials provided in large family child care homes must be double the requirements for the regular home as listed above when nine (9) or more children are present.

NM. Some sand or equivalent dry material or water play should be offered to children eighteen (18) months of age or older, indoors or outdoors, at least monthly and year round. If used, food and/or organic material must be discarded each week.

O. Daily physical gross motor activities, with or without equipment or materials, must be provided outdoors, or indoors to children for no less than sixty (60) minutes total for full--day family child care homes programs. Activities do not have to occur all at once.

2.3347.707.84 SCREEN TIME AND MEDIA USE

A. There must not be intentional screen time, which includes television, recorded media, computer, tablet, cell phones, video games, and other media devices for children under twenty-four (24) months of age. Children under twenty- four (24) months must be redirected from an area where screen time is displayed and provided with alternate activities. Media use including, but not limited to, television, video viewing, music, video games, and computer use should be permitted only with:

1. The written approval of a child's parent(s) or guardian(s). The authorization may be included in the parent handbook or contract;

2. Parent-approved time limits; and

B. Screen time is prohibited during snack or meal times.

C. All media that children are exposed to must be developmentally appropriate and must not contain explicit language or topics. Activities must not contain violence, profanity, nudity, or sexual content, and must have a rating appropriate for the age of children in care.

D. For children two (2) to five (5) years of age, screen time must be limited to no more than sixty (60) minutes per day.

E. For children two (2) years of age and older, screen time may only exceed sixty (60) minutes for a special occasion and must not occur more than once every two (2) weeks.

FB. All children must be provided with a developmentally appropriate alternative activity once they child(ren) loses interest in the media activity.

G. There is no time restriction for children using personal adaptive equipment or assistive technology, or participating in mandatory school activities.

7.707.9 FACILITY REQUIREMENTS AND TRANSPORTATION

2.3357.707.91 GENERAL REQUIREMENTS

A. The entire premises are subject to inspection for licensing and safety purposes including, but not limited to, to the entire residence and where care is to be provided, the grounds surrounding the residence, the basement, the attic (if accessible), the storage shed, garage and/or carport, and any vehicles used for transportation of children in care.

B. A business of a nature and Any other business activitiesy that might be hazardous to the health, safety, or well-being of children, or that interferes with the supervision of children, cannot be operated or conducted on the premises of the family child care home during child care business hours.

C. Mobile homes used as family child care homes must have at least two (2) exits, be secured, attached, skirted, and properly installed and stabilized, and have at least two (2) exits.

D. The premises of the family child care home must be kept safe and free from hazards to health at all times.

E. All weapons on the premises of the licensed family child care home must be unloaded, locked, and inaccessible to children. Ammunition and arrows must be locked and stored separately. This includes, but is not limited to, firearms, air rifles, bb guns, paintball guns, bows, hunting knives, swords, hunting sling shots, and martial arts weapons. Trigger locks are acceptable. Antique and other guns used for decoration must be unloaded, inoperable and have the firing pin removed. An unstrung bow need not be stored in a locked container. Weapons must not be transported in any vehicle in which children are riding unless the weapons are made inoperable and inaccessible. The provider, employees, and substitutes must know the location of any weapons in the home.

1. Weapons, and ammunition, and /arrows must be locked and stored separately. Trigger locks are acceptable.

2. Antique and other guns used for decoration must be unloaded, inoperable, and have the firing pin removed, if applicable.

3. Weapons must not be transported in any vehicle in which children are riding unless the weapons are made inoperable and inaccessible.

4. EmployeesEqually qualified providers, qualified substitute, staff members and volunteers are prohibited from carrying firearms as defined in section 18-1-901(3)(h), C.R.S., on the premises, both indoor and outdoor, and in any vehicle in which children are transported.

5. The family child care homeprimary provider, applicant 2, equally qualified provider, qualified substitute, and staff members employees, and substitutes must know the location of any weapons in the family child care home.

F. All garbage and other wastes must be stored in a manner that is inaccessible to children and disposed of in a manner that does not constitute a health hazard or nuisance.

G. Fire hazards, such as defective electrical or gas appliances and electric cords, dangerous or defective heating or cooking equipment, or exposed wiring, must be repaired by a qualified repair and/or service company or removed from the family child care homedefective electrical or gas appliances and electric cords, dangerous or defective heating or cooking equipment, exposed wiring and flammable material stored in such a manner as to create a risk of fire must be corrected or eliminated.

H. All stairways must be free from hazards, and open-sided portions that are located more than thirty (30) inches above the floor or grade belowthose with more than five (5) steps must be equipped with banisters or handrails within reach of children. The slats on all railings must be no wider than four (4) inches apart or modified to prevent entrapment.

IH. Stairways of more than four (4) steps, in indoor and licensed outdoor areas, that are accessible to children must have gates that prevent access from the area being used when children under two (2) years old are present. The gate may be taken down as long as the family child care home primary provider, applicant 2, equally qualified provider, qualified substitute, or staff member is providing direct supervision of the child who is learning climbing skills on the stairs. Because of the risk of serious physical injury to a child, providers, employees, substitutes, volunteers, and visitors must never lift children over the gates while on a stairway.

JI. Because of the risk of serious physical injury to a child, providers, employees, substitutes, volunteers, and visitors must never step over a gate while holding a child or lift a child over a gate.

KJ. Drinking water obtained from a source other than a regulated public water system must be tested annually for total coliform, e. Coli bacteria, and nitrate, at a minimum. The results must be in compliance with rule section 11.45 of the “Colorado Primary Drinking Water Regulations” located in 5 CCR 1002-11. Results must be maintained and available for review.

The Colorado Primary Drinking Water Regulations (January 14, 2023), are herein incorporated by reference. No later editions or amendments are incorporated. These rules are available at no cost from the Colorado Department of Public Health And Environment, 4300 Cherry Creek Drive South Denver, CO 80246; or at www.sos.state.co.us. These rules are also available for inspection and copying at the Colorado Department of Early ChildhoodDepartment, 710 S. Ash Street, Bldg. C, Denver, Colorado 80246, during regular business hours. Drinking and food preparation water from any source other than a regular municipal water supply or commercially bottled water must be tested annually and the results available for review. The water must be in compliance with water quality requirements of the Colorado Department of Public Health and Environment.

L The following types of animals and their enclosures must be inaccessible to children in care at all times: psittacine/hooked beak birds, poultry, ferrets, reptiles, amphibians, primates, hermit crabs, and any poisonous animals.

MJ. Any provider's, employee's, substitute's, volunteer's, and/or visitor's animal(s) and/or fish that are dangerous, and/or pose a potential threat to a child's safety or health must be confined in a place away from the child care area and inaccessible to children.

N. The provider'sAny animals in the family child care home must be vaccinated as required by state law and local ordinance, and proof of vaccination must be available for review by the licensing specialist.

K. Psittacine/hooked beak birds must be in a separate room inaccessible to children in care.

OL. Children must not be permitted to mistreat animals.

M. All play equipment must be designed to guard against entrapment and strangulation. Swing sets and other outdoor play equipment must be correctly assembled, well maintained, and securely stabilized or anchored. All swings for children three (3) years of age and older must have seats made of flexible material.

PN. All adult exercise equipment must be inaccessible to children.

Q. Indoor and outdoor equipment, materials, and furnishings must be sturdy, safe, and free of hazards.

2.3367.707.92 INDOOR REQUIREMENTS

A.7.707.921 General Indoor Requirements

1A. There must be open, uncluttered, and safe indoor play space of at least thirty-five (35) square feet of floor space per child, including space for moveable furniture and equipment exclusive of:

a1. Hallways;

b2. Bathrooms;

c3. Stairways;

d4. Closets;

e5. Laundry rooms;

f6. Furnace rooms; and

g7. Space occupied by permanent built-in cabinets and permanent storage shelves.

B. The large home must provide sufficient floor space in the specific room(s) designated for use for child care that does not include space used by household furniture.

C. One room or area in the home, within sight or sound of the provider, that contains a bed, cot or sofa must be available for a child in the event of an illness or injury where a child can be separated from other children and comfortably cared for. A crib or playpen with a pad must be provided for children under twelve (12) months of age. A clean, washable

~~sheet and blanket must be provided for each child, and shall be cleaned and changed after each use by a sick or injured child.~~

2B~~D~~. All floors must have an easily cleanable finish including, but not limited to: carpets, tile, wood, or concrete.

3C~~E~~. Interior walls must be free of holes and constructed of solid material with a smooth finish that can be easily cleaned. Painted finishes shall be maintained free from peeling, chipping or otherwise deteriorating paint.

4D~~F~~. The family child care home must be equipped with adequate light, heat, ventilation, and plumbing for safe and comfortable occupancy. The heating unit ~~facility~~ must be capable of maintaining a draft-free temperature of a minimum of sixty-eight (68) degrees Fahrenheit at floor level in all rooms used for child care.

5E~~G~~. All rooms must be kept in a clean and sanitary condition and be free of any evidence of pest or rodent infestation.

~~7.707.922~~BB. Indoor Equipment, Materials and Furnishings

1A. Toys, toy parts, furnishings, equipment, and any materials accessible to children under three (3) years of age must not be a choke hazard ~~be large enough that they cannot be swallowed or inhaled, to prevent~~ or able to be inhaled.

2B. An adequate number of high chairs and other child size suitable equipment that meet ~~s nationally recognized standards~~ Federal Consumer Product Safety Commission standards published by the Consumer Product Safety Commission (CPSC) at 16 CFR § 1112 and 1321 (June 19, 2019), herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the CPSC at https://www.ecfr.gov. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours; must be provided when feeding each child under two (2) years of age.

3C. Children's use of walkers with wheels is prohibited unless specifically provided for a child's special needs as ordered in the child's health care plan.

~~D. Furnishings and equipment in the area approved for child care must be in good repair.~~

4E. Furnishings for relaxation and comfort mustshall include, but not be limited to:

a1. Soft play areas, which may include rugs, carpets, mats, and cushions; and

b2. Clean and soft toys.

C.~~7.707.923~~ Indoor Safety

1A. All hazardous items and materials must be inaccessible to children including, but not limited to, office supplies, matches, plastic bags, cleaning and laundry materials, ~~medicines,~~ perfumes, curling irons, adult sharp scissors and knives, cosmetics, shaving lotions, hair products, poisonous plants, and all items labeled by manufacturer as "keep out of reach of children."

2B. In rooms accessible to children, all electrical outlets and power strips must have protective covers, or safety outlets must be installed; all exposed light bulbs accessible to

children in areas where children can play must have protective covers. Electrical cords must be in good condition and mustshall not pose a hazard, such as strangulation, falling, or tripping hazards.

a. Extension cords must not be used in place of permanent wiring and must be used in accordance with the manufacturer's specifications.

b. Extension cords and space heaters must be plugged directly into a wall outlet.

c. Space heaters must be plugged directly into a wall outlet.

3C. Window blind cords and coverings must be secured out of children's reach or otherwise made safe to prevent strangulation.

4D. During child care hours, fans that pose a safety hazard to children (such as dangling cords, fans that can be pulled onto the child, and those where the child can stick fingers in the blades) must be inaccessible to children.

5E. Although Exterior doors maycan be locked, and they must be maintained so as to permit easy exit; interior doors must be designed to prevent children from becoming trapped. No locks or fastening devices can be used that would prevent emergency evacuation. No more than one (1) lock can be used on an exit door during business hours.

F. No locks or fastening devices can be used that would prevent emergency evacuation.

6G. Any level where child care occurs must have at least two (2) means of escape. A basement exit may include a window large enough for the family child care homeprimary provider, applicant 2, equally qualified provider, qualified substitute, staff membersemployees, substitute, volunteers, visitors, and children to individually exit.

7H. For windows used as a second exitIf where the window sill height is over thirty (30) inches, there must be permanent access to the window. Permanent access canThis includes a ladder bolted to the wall or sturdy and easily climbed furniture permanently attached to the wall or steps.

a. For window wells over forty-four (44) inches, there must be an attached escape ladder designed specifically for the purpose of evacuation of children from the window well to the ground level.

b. For newly licensed family child care homes licensed after March 1, 2024, the emergency escape opening must be a minimum of 5.7 square feet with a minimum width of twenty (20) inches and a minimum height of twenty-four (24) inches.

I. Upper levels where child care occurs, without a second exit, must have escape ladders designed specifically for the purpose of evacuation of children.

8J. All unvented gas or electric heating units, unvented gas or electric, must be installed and maintained with safety devices to prevent fire, explosions, and other hazards. No oOpen-flame gas or oil stoves, unscreened fireplaces, hot plates, or and unvented heaters can must not be used.

9. All heating units must be used and maintained in accordance with the manufacturer's specifications. Space heaters must have a heating element that does not exceed 212 degrees Fahrenheit and be equipped with a tip-over safety switch.

10K. Any cooking stoves with controls within reach of a child shall have a safety guard.

11L. Flammable or combustible items must be stored in a locked area remote from the kitchen, and at least three (3) feet from the furnace, hot water heater or any other heating device. These items include, but are not limited to, paints, fuels, insecticides, and other hazardous chemicals.

12. Furnaces and hot water heaters must be maintained in accordance with the manufacturer specifications and inaccessible to children.

M. A smoke detector in working condition must be installed on each level of the home.

13N. All family child care homes must have smoke alarms installed in every bedroom licensed for care, in the immediate vicinity outside every of the bedrooms, in every area used as a sleeping room, and at least one on each floor of the house.

a. Smoke alarms must not be older than the manufacturer directs.

b. For family child care homes licensed after March 1, 2024, smoke alarms must be interconnected so that when one (1) alarm is activated all are activated.

14. There must be a carbon monoxide detector in working condition installed in the area of the family child care home as recommended by the manufacturer and in the hallway outside the licensed bedrooms or area where children sleep.

15O. The family child care home must contain at least one (1) fire extinguisher in working condition with the minimum weight of five (5) pounds, and minimum rating of 2A-10-BC as listed on the fire extinguisher label. The fire extinguisher must be easily accessible or the identifying sign where the fire extinguisher is located must be highly visible and easily accessible.

a. Fire extinguishers must be replaced at least every six (6) years.

P. The use of indoor and/or climbing equipment indoors is subject to Section 7.707.932.

2.337.707.93 OUTDOOR REQUIREMENTS

A7.707.931 General Outdoor Requirements

1A. At least seventy-five (75) square feet of useable outdoor play space must be available for each child in care.

2B. The outdoor play space must be enclosed with at least a forty-two inch (42") fence with slats no more than four (4') inches apart, or a natural barrier. If a natural barrier is used, it must begin no higher than three and one-half inches (3-1/2") from the ground. If the family Child Care home does not have a fenced play space, the provider may apply for an outdoor hardship waiverprovisions must be made for outdoor play in an area approved by the State Department.

3C. All parts of the play area must be visible and easily supervised.

4D. Shade must be available.

5E. Decks that are more than twelve (12) inches high must have or be modified to have a protective railing or other barrier with slats no wider than four (4) inches apart.

a. IfAdditionally, fFor decks installed at ground level with more than a twelve inch (12") gap between flooring and ground, the gap must be inaccessible to children.

6F. Tiered yards that have drop offs of more than twelve inches (12") must have a protective railing or other barrier with slats no wider the four inches (4") apart.

7G. All outdoor areas where children may pass or play mustshall be kept free of animal contamination. All animal wastes must be promptly removed and placed in a lidded container or otherwise inaccessible to children.

8H. Window wells accessible to children must have covers that are in good condition and will protect children from falling into the window well. Window well covers must not prevent exiting from a basement window designated as the second exit.

9I. Swimming pools, permanent wading pools, and above ground pools located on the property of the family child care home must be enclosed with a five foot (5') fence and a locked gate.

aF. With written permission of the parent(s) or guardian(s), children in care mayshall be permitted to use the permanent pool in the presence of an adult who holds a current Red Cross basic lifeguarding certificate or equivalent, and is actively responsible for lifeguarding protection.

10J. Water used by children in play areas, including wading pools, must be drained and equipment must be cleaned and disinfected at the end of each daynot left to stand more than one (1) day.

11K. All hot tubs must have bolted and securely locked covers. All children in care are prohibited from using hot tubs.

12L. Decorative ponds in the designated play area must have use childproofing grates to prevent risk of drowning when there is no fence.

13M. The use of any trampoline by children in care is prohibited. If there is a trampoline on the property of the family child care home, it must be stored in a way that makes it totally inaccessible to children.

14N. Tree houses must be inaccessible to children in care.

15O. Walkways must be cleared of snow and ice to provide safe entry and exit from the family child care home.

16. If a sand box designated for play sand box is used it must be covered when not in use.

17. Outdoor space hardship

a. If an outdoor play space is not directly attached to the facilityfamily child care home or accessible via secure access, or the childcare facilityfamily child care home cannot meet outdoor space requirements due to a hardship based on the location of the facilityfamily child care home, the facilityamily child care home must develop a site-specific plan, which will be submitted to the Department for review and approval, that includes the following:

1) Identification of an accessible (appropriate for the age group of children served) alternate outdoor space including a description and approximate square footage of the space;

2) A diagram outlining how children will safely travel to and from this location; and

3) A plan for supervision, including any special staffing requirements, to safely access and utilize the alternate outdoor space that includes:

a) Attendance tracking upon arrival to the outdoor space and return to the family child care home;

b) Children's toileting and diapering needs;

c) Children's routine and emergency medical needs including the use of first aid kits and accessibility of emergency contact information when not on site at the childcare facilityfamily child care home;

d) Plans for alternate activities if the outdoor space is unavailable; and

e) If play equipment or climbing structures are present in the outdoor space, a plan for assessing safety of equipment and supervising age-appropriate play;

4) b. An emergency evacuation plan including the location of a secondary site for reunification with parents in the case of an emergency while at the offsite location and plans for accessing shelter in the case of emergency.

5) c. A policy that notifies the parent(s) or guardian(s) of the alternate outdoor space.

b. 1) If the outdoor space becomes unusable or the family child care home program cannot maintain what was approved in the plan, the primary provider must submit a new plan to the Ddepartment within ten (10) calendar days of a change in the usability of such outdoor space.

c. 2) Family child care homes licensed prior to March 1, 2024, may not reduce or eliminate existing licensed outdoor space to qualify for the outdoor space hardship.

B.7.707.932 Outdoor Equipment, Materials and Surfaces

1A. Resilient Surfacing as defined in rule section 2.304(.77) Requirements:Protective Surfacing Requirements

a. All climbing equipment, sliding equipment, or equipment with attached platforms, eighteen (18) inches or higher must have resilient surfacing of at least six (6) inches in the use zone, see rule section 2.337(B)(3), surrounding the equipment.

b. Department-approved resilient surfacing includes loose fill materials such as wood chips, wood mulch, engineered wood fiber, pea gravel, synthetic pea

gravel, shredded rubber tires, and sand. Solid unitary materials include poured in place surfacing, approved rubber mats, playground tiles, and aArtificial turf with built in resilient pad.

c. Loose fill resilient surface must be raked regularly to retain its resiliency and to retain a depth of at least six (6) inches.

1) Any newly installed solid unitary materials used for resilient materials must have written documentation from the manufacturer stating the material meets current federal requirements.

1. All pieces of permanently installed climbing equipment must be surrounded by and have at least four inches (4") of a nationally recognized protective surface underneath the equipment.

2. By December 31, 2010, all pieces of permanently installed playground equipment must be surrounded by and have at least six inches (6") of a nationally recognized protective surface underneath the equipment.

B. Sand may be used as a protective surfacing when regularly raked, rototilled or replaced to retain its resiliency.

C. If during any type of licensing visit the sand has become compacted and lost resiliency or depth, the provider must immediately replace the sand with one of the other approved protective surfacing materials.

D. Portable climbing equipment over two feet (2') in height, whether indoor or outdoor, must be on a protective surfacing. No equipment can be placed on cement or grass.

2. Maximum height of equipment

a. The maximum height of toddler climbing equipment, sliding equipment, or equipment with attached platforms cannot exceed thirty-two (32) inches.

b. The maximum height for preschool and school-age climbing equipment, sliding equipment, or equipment with attached platforms must not exceed six (6) feet in height with six (6) inches of department-approved resilient surfacing as listed in rule section 2.337(B)(1).

3. Use zone

a. Toddler climbing equipment, sliding equipment, or equipment with attached platforms must have a three (3) foot use zone surrounding the equipment. Toddler slides require a six (6) foot use zone extending out from the base of the slide.

b. Preschool and school-age climbing equipment, sliding equipment, or equipment with attached platforms must have a six (6) foot use zone surrounding the equipment.

c. Moving equipment must be located toward the edge or corner of a play area or be designed in such a way as to discourage children from running into the path of the moving equipment.

4. Metal equipment must be placed in the shade.

5. All play equipment must be designed to guard against entrapment and strangulation. Swing sets and other outdoor play equipment must be correctly assembled, well maintained, and securely stabilized or anchored.

6. All swings for children three (3) years of age and older must have seats made of flexible material.

E. By December 31, 2010, all swing sets or permanent climbing equipment must ensure a minimum fall zone consistent with the nationally recognized standards.

C.7.707.933 Outdoor Activities

1A. The family child care home program must include outdoor play for all ages each day except when the severity of weather, including temperature extremes, makes it a health hazard, or when a child must remain indoors as indicated in writing by a health care provider or in a health care plan.

2B. Developmentally appropriate supervision must be provided during outdoor play in the approved, adjoining fenced play area.

3C. Children playing in an unfenced area or any other outdoor play area outside of the, other than the required, approved fenced play area must be under direct supervision at all times.

4D. Children must wear protective equipmenthelmets, wrist protection, and knee and elbow pads when riding a scooter, bicycle, balance bike, skateboard, or rollerblades.

5. Motorized riding toys are not permitted.

E. All protective surfacing (excluding sand, wood chips, wood mulch, engineered wood fiber, pea gravel, synthetic pea gravel, and shredded rubber tires) and rubber mats must be manufactured for such use consistent with federal guidelines and be approved by the State Department.

D.7.707.934 Outdoor Safety

1A. Children must be directly and actively supervised near standing water including, but not limited to, fountains, buckets, wading pools, and animal troughs.

2B. All outdoor play areas shall frequently be surveyed and must be kept safe and free from hazardous materials or debris that could cause harm to children.

3C. Outdoor play space, including areas under decks must be free from safety hazards including, but not limited to, lawn mowers, tools, propane, gasoline, building scraps, and scrap metal.

4. Gas grills with propane tanks must be inaccessible or have a safety on/off knob on it.

5. Gates used for emergency evacuation must remain unlocked during child care hours.

C.7.707.94 2.338 TRANSPORTATION

A1A. The driver of a vehicle used to transport children must follow required state laws, including possession of a current valid Colorado driver's license, current automobile

insurance, and meet the requirements of Colorado child passenger safety laws at sections 42-4-236 and 42-4-237, C.R.S.

B2B. At least one (1) adult in the vehicle transporting children must have a current State Department-approved Ffirst Aaid certificate and Department-approved CPR certificate. and for all ages of children. A fFirst Aaid kit must be available in the vehicle.

C3C. Any child transported must be properly restrained in a child restraint system that meets the requirements of the Colorado child passenger safety laws in sectionsat 42-4-236 and 42-4-237, C.R.S., that requires:

a1. Children under the age of one (1) years and weighing less than twenty pounds, must ride the back seat of the vehicle, in a rear-facing child restraint system, according to the manufacturer's instructions. safety seat until they are at least one (1) year old and weigh at least twenty (20) pounds.

b2. Children ages one (1) to four (4) years and who weigh twenty (20) to forty (40) pounds must be properly restrained in a rear-facing or forward-facing child restraint system, according to the manufacturer's instructionscar seat.

c3. Children who are under eight (8) years of age and who are being transported, shall be properly restrained in a child restraint system, according to manufacturer's instructions.Children at least four (4) years of age and are less than six (6) years old must continue to ride in a child restraint (unless they are fifty-five inches tall); typically, this is a booster seat; and

d4. Children who are at least eight (8) years of age but less than sixteen(16) years of age who are being transported, shall be properly restrained in a safety belt or child restraint system according to manufacturer's instructions.Children between six (6) and sixteen (16) years old or are fifty-five inches (55") tall must be properly restrained in a seat belt.

D4D. When any vehicle is used by the family child care home to transport children in care, the following requirements must be met:

1. Each child under four years of age and weighs less than forty pounds must be properly fastened into a child restraint system in a seating position equipped with a safety belt or other means to secure the system according to the manufacturer's instructions;

1a2. Two (2) or more children must never be restrained in one (1) seat belt or child restraint system;

2b3. It is the responsibility of the driver transporting children to ensure that such children are provided with, and that they properly use, a child restraint system or safety belt system;

3c4. Children who meet the requirements to be restrained in a safety belt must be instructed and monitored to keep the seat belt properly fastened and adjustedChildren between six (6) and sixteen (16) years of age or are fifty inches tall or more must be instructed and monitored to keep the seat belt properly fastened and adjusted;

4d5. Children, who are appropriately placed in a safety belt system according to state law, must be properly secured by the safety belt system. The shoulder belt must

never be placed behind the back or under the arm. The lap belt must be secured low and tight across the upper thighs;

5f6. Children under thirteen (13) years of age must never be transported in the front seat of a vehicle;

6g7. Children must never be left alone in a vehicle;

7h8. Children must be loaded and unloaded safely and out of the path of moving vehicles;

8i9. The total number of passengers being transported shall never exceed the vehicle manufacturer's specifications;

9j10. The provider cannot transport more children than any vehicle can safely accommodate with child restraint systems and seat belts that are properly installed in the vehicle;

10k11. The seats of the vehicle must be constructed and installed according to the manufacturer's specifications;

11l12. Modifications to vehicles including, but not limited to, the addition of seats and seat belts must be completed by the manufacturer or an authorized representative of the manufacturer. Documentation of such modifications must be available for review by the Licensing SpecialistDepartment;

12m13. The vehicle must be enclosed and have door locks in proper working order;

13n14. The vehicle must be kept in satisfactory condition to assure the safety of occupants. Vehicle tires, brakes, and lights must meet safety standards set by the Colorado Department of Revenue, Motor Vehicle Division (section 42-4-236, C.R.S.); and

14o15. At a large family child care home, there must be at least one (1) adult supervisor, in addition to the driver, for when nine (9) to twelve (12) children are being transported in using the vehicle.

E5E. The family child care homeprimary provider must obtain written permission from the parent or guardian for transportation of the child.

F6F. If the family child care home provides transportation to and from care, the family child care home primary provider, applicant 2, equally qualified provider, qualified substitute, or staff member must supervisemonitor the child between the vehicle and the child's home or another home authorized by the child's parent(s) or guardian(s) until the child is safely in the care of another adult.

G7. If the family child care home provides transportation to and or from care, children remaining at the family child care home must be supervised by the primary provider, applicant 2, an equally qualified provider,a qualified substitute, or staff member.

G. Transportation arrangements for school-age children must, be by agreement between the home and the child's parent or guardian (e.g., whether the child can walk, ride a bicycle, or travel in a car). The home must exercise reasonable precaution to see that the children arrive at the home from school when expected and must follow up on their whereabouts if

late. Written permission from a parent or guardian for the child to attend community functions after school hours must include agreements regarding transportation.

H8. Agreement must be made annually between the provider and parents or guardians on transportation arrangements for school age children (e.g. walking, riding a bicycle, bus, or traveling in a vehicle) to and from the family child care home. It is the provider's responsibility to ensure the child arrives to the destination at agreed upon time.

H. If transportation is provided between the home and school for school-age children, the required adult-to-child ratio and supervision must be maintained for children remaining at the home.

…

2.700 7.720 RULES REGULATING NEIGHBORHOOD YOUTH ORGANIZATIONS [Eff. 4/1/11]

All Neighborhood Youth Organizations shall comply with the "General Rules for Child Care Facilities".

2.7010 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101, C.R.S., et seq. (the "APA"), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101, C.R.S., et seq. (the "Early Childhood Act"), C.R.S., and the Child Care Licensing Act, sections 26.5-5-301, C.R.S., et seq., C.R.S.

The specific rulemaking authorities granted for Neighborhood Youth Organizations include section 26.5-5-308(2), C.R.S.

2.7021 SCOPE AND PURPOSE

The Colorado Department of Early Childhood, Division of Early Learning, Licensing, and Administration is responsible for the administration of health and safety rules and requirements for licensed child care facilities. These rules outline the requirements for Neighborhood Youth Organizations. These rules shall govern the health and safety requirements for licensed Neighborhood Youth Organizations. All Neighborhood Youth Organizations must comply with the "Rules Regulating Neighborhood Youth Organizations" in rule section 2.700; "General Rules Regulating Child Care Facilities" in rule section 2.100; and "Rules Regulating Special Activities" in rule section 2.600.

2.7032 APPLICABILITY

The provisions of these rules and regulations shall be applicable to nonprofit organizations that provide programs and services, to children, youth, and families through comprehensive wraparound supports to ensure positive growth and development during childhood and adolescence, and is designed to serve youth as young as five (5) years of age who are enrolled in kindergarten and as old as eighteen (18) years of age.

2.7043 7.720.1 DEFINITIONS [Eff. 4/1/11]

A. "Employee" is means a paid staff member employee of a Neighborhood Youth Organization who is of eighteen (18) years of age or older.

B. "Neighborhood Youth Organization" ismeansmeans a nonprofit organization that provides programs and services, as described in section 26.5-5-308, C.R.S., to children, youth, and families through comprehensive wraparound supports to ensure positive growth and development during childhood and adolescence, and is designed to serve youth as young as five (5)six years of age who are enrolled in kindergarten, and as old as eighteen (18) years of age and that operates primarily during times of the day when school is not in session and provides research-based, age-appropriate, and character-building activities designed exclusively for the development of youth from six to eighteen years of age.

1A. These activities mustshall occur primarily in a facility leased by, granted access or use to, or owned by the Neighborhood Youth Organization. The activities mustshall occur in an environment in which youth have written parental or legal guardian consent to become a youth member of the Neighborhood Youth Organization, and to participate in the programs and services of the Neighborhood Youth Organization and to arrive at and depart from the primary location of the activity on their own accord, without supervision by a parent, legal guardian, or organization.

2B. A Neighborhood Youth Organization does not includeexcludesshall not include faith-based centers, and organizations or programs operated by state, or or city parks, or or special districts, or or departments, or facilities that are currently licensed as child care centers as defined in rule section 2.203(B) of the "Rules Regulating Child Care Centers7.702, et seq. (12 CCR 2509-8).

C. "Nonprofit Organization" means an organization that is exempt from taxation pursuant to section 501-(c)(3) of the Federal "Internal Revenue Code of 1986", 26 U.S.C. Ssec. 501, as amended.

D. A "Volunteer" ismeansmeans a person who volunteers theirhis or her assistance to a Neighborhood Youth Organization and who who is eighteen (18) years of age or older.

E. "Youth member" means a youth who is five years of age and enrolled in kindergarten or who is older than five years of age and up to eighteen years of age whose parent or legal guardian has provided written consent for the youth to participate in the activities of a neighborhood youth organization.means a youth who is fivesix (5) years of age and enrolled in kindergarten or who is older than five (5) years of age and up tothrough eighteen (18) years of age whose parent or legal guardian has provided written consent for the youth to participate in the activities of a Neighborhood Youth Organization and who pays a nominal fee for said membership.

F. A "Youth Employee" is a paid staff member of a Neighborhood Youth Organization who is between the ages of fourteen (14) and seventeen (17) years old, and does not have unsupervised contact with youth.

POLICIES AND PROCEDURES

2.7054~~7.720.2~~ STATEMENT OF POLICIES AND PROCEDURES~~OPERATION OF A NEIGHBORHOOD YOUTH ORGANIZATION [Eff. 4/1/11]~~

A. Each Neighborhood Youth Organization is required to have a written mission statement. This statement must be kept on file, updated periodically, and made known to employeesstaff and to parent(s)/guardian(s), and must be available during licensing inspections.

B. The Neighborhood Youth Organization 's mustshall post its policies and procedures in bold print and in plain view, and mustshall make a written copy available to parents and guardians, which mustshall include the following:

1. The address of the licensed Neighborhood Youth Organization, general hours of operation, and policy regarding closure of the Neighborhood Youth Organization;.

2. The Neighborhood Youth Organization's mission statement;.

3. The ages of youth members accepted;.

4. The enrollment procedure for a youth memberconcerning membership requirements that at a minimum includes: the youth member's name, date of birth, parent/guardian contact information, emergency contact information, and written authorization to attend;.

5. The procedures for:

   a. Arrival and departure from the Neighborhood Youth Organization;

   b. Notification of parents and guardians, for handling emergencies;

   c. Youth member's personal belongings and money;

   d. Filing a complaint against the Neighborhood Youth Organization; and,

   e. Background checks and other criminal history checks of employees and volunteers.;

6. The policies on:

   a. Guidance;

   b. Visitors;

   c. Meals and snacks; and

   d. The reporting of child abuse (see rule section 2.1227.701.53 of the "General Rules for Child Care Facilities").;

7. If services are offered for special needs youth members that the Neighborhood Youth Organization operates in compliance with rule section 2.1157.701.14, of the "General Rules Regulating child Care Facilities Civil Rights;".

8. An itemized fee schedule;. and

9. The role of the governing board.

CB. The fee for obtaining a Neighborhood Youth Organization license can be found in rule section 2.111 of the "General Rules Regulating Child Care Facilitiesis located in the General Rules at Section 7.701.4."

2.7065 7.720.3 COMMUNICATION, EMERGENCY AND SECURITY PROCEDURES [Eff. 4/1/11]

Each Neighborhood Youth Organization is required to have a written mission statement. This statement shall be kept on file, updated periodically, and made known to staff and to parents and guardians, and shall be available during the licensing inspection.

A. During the hours the Neighborhood Youth Organization is in operation, the Neighborhood Youth Organization mustshall provide an office and/or monitored telephone number known to the public and

available to parent(s)/guardian(s) in order to provide immediate access to the Neighborhood Youth Organization.

B. The Neighborhood Youth Organization must have a working telephone with the number available to the public. There shall be a land line telephone at the primary facility.

C. The Neighborhood Youth Organization mustshall have an established means of communication between employeesstaff and the program office when youth members are being transported or are away from the permanent site on a field trip.

D. Emergency telephone numbers mustshall be posted at each permanent site and taken on all field trips and during mobile Neighborhood Youth Organization programs. The emergency numbers shall include, at a minimum, emergency 911, or rescue unit telephone number if 911 is not available.; Phone numbers are also required for the clinic or hospital nearest to the activity location; ambulance service; local fire, police, and health departments; and, Rocky Mountain Poison Control.

E. The Neighborhood Youth Organization mustshall have a written emergency procedure that explains at a minimum, how youth will be evacuated to a safe area in case of fire or other disaster andfor the reporting of of reportable communicable illnesses to the local health department pursuant to regulations of the Colorado Department of Public Health and Environment. The complete list of reportable communicable illnesses can be found in 6 CCR 1009-1 (Apr. 19. 2023), rules and regulations pertaining to Epidemic and Communicable Disease Control, herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the Colorado Department of Public Health and Environment at http://sos.state.co.us/ccr. These regulations are also available for public inspection and copying at the Department at 710 S. Ash St., Bldg. C., Denver, CO 80246, during normal business hours .

F. The Neighborhood Youth Organization mustshall be able to provide emergency transportation to a health care facility at all times either via program vehicle or the emergency medical services system.

G. The director of the Neighborhood Youth Organization or the director's delegated substitute mustshall have a means for determining at all times who is present at the Neighborhood Youth Organization.

H. A written policy regarding visitors to the Neighborhood Youth Organization mustshall be posted and a record maintained daily by the Neighborhood Youth Organization that includes, at a minimum, the visitor's name, phone number, and address and the purpose of the visit.

I. Each Neighborhood Youth Organization must have a written plan for action in case of emergencies, including, but not limited to: floods, tornadoes, severe weather, injuries, and how youth will be evacuated to a safe area. This plan must be on file at the Neighborhood Youth Organization. Neighborhood Youth OrganizationThe employeesstaff must have received training from the Neighborhood Youth Organization regarding the implementation of the plan prior to assuming supervisory responsibility for youth. Written verification of the training shall be in the employees staff member's personnel file.

RECORDS

2.7076**7.720.83** ADMINISTRATIVE RECORDS AND REPORTS [Eff. 4/1/11]

A. Each Neighborhood Youth Organization must develop a system of gathering, recording, and responding to complaints.

B. The following records must shall be on file at the Neighborhood Youth Organization:

1. Records of enrollment, daily attendance for each youth, and daily record of time each youth member arrives at and departs from the Neighborhood Youth Organization.

2. Current Colorado Department of Public Health and Environment or local health department inspection report within the past twenty-four (24) months.

3. Current local fire department inspection report issued within the past twenty-four (24) months.

4. A list of current employees staff membersand volunteers , either available on site or on file at a central location.

5. A record of all emergency drills held over the past twelve (12) months, including date and time of drill, number of adults and youth members participating, and the amount of time taken to evacuate.

6. The Neighborhood Youth Organization must maintain rRecords of reports of communicable illness made to the Colorado Department of Public Health and Environment or local public health agency.

7. A record of visitors to the Neighborhood Youth Organization

CB. The Neighborhood Youth Organization must shall submit to the Department as soon as possible but not longerlater than twenty-four (24) hours after the critical incident a written report about any critical incident. Such report mustshall indicate:A report about a critical incident shall include

1. The youth member's name, birth date, address, and telephone number;.

2. The names of all involved and witnesses to the incident, the youth member's parents or guardians, and their address and telephone number(s) if different from those of the youth member;.

3. Date of the incident;.

4. Brief description of the incident; and

5. Documentation of action taken and/or the name and address of the police department or authority if a report was made.

C. Each Neighborhood Youth Organization shall have a written plan for action in case of natural disaster including, but not limited to, floods, tornadoes, severe weather, and injuries. This plan shall be on file at the Neighborhood Youth Organization. The staff shall have received training regarding the implementation of the plan prior to assuming supervisory responsibility for youth. Written verification of the training shall be in the staff member's personnel file.

7.720.8 RECORDS AND REPORTS

2.70877.720.84 CONFIDENTIALITY AND, RECORDS RECORD RETENTION, and Cooperation with Local Investigations [Eff. 4/1/11]

A. The Neighborhood Youth Organization mustshall maintain complete records of youth members and employeespersonnel as required in rule sections 2.208 and 2.209 of the "Rules Regulating Child Care Centers that Provide Less than 24-hour Care."

B. The confidentiality of all employeepersonnel and youth member's records shall be maintained, pursuant to rule section 2.124 of the "General Rules for Child Care Facilities."Section 7.701.6, "Confidentiality of Records".

C. EmployeePersonnel and youth member's records mustshall be available, upon request, to authorized personnel of the State Department, pursuant to section 19-1-307(2)(j.7), C.R.S.

D. If records for an organization withheadquarters servicing more than one Neighborhood Youth Organization are kept in a central file, duplicate identifying and emergency information for both employeesstaff and youth members must also be kept on file at the Neighborhood Youth Organization attended by the youth members and where the employeestaff member is assigned.

E. The records of youth members and employeespersonnel mustshall be maintained by the Neighborhood Youth Organization or Neighborhood Youth Organization central headquarters for at least three (3) years.

F. Neighborhood Youth Organizations mustshall cooperate with all state and local investigations regarding incidents, including but not limited to, licensing violations, child abuse, and incidents affecting the health, safety, and welfare of youth members.

NEIGHBORHOOD YOUTH ORGANIZATION SERVICES

2.715 ADMISSION PROCEDURE

A. Prior to attendance, the parent(s) or guardian(s) must provide signed authorization for the youth member to participate in the programs and services of the Neighborhood Youth Organization.

B. The Neighborhood Youth Organization can only accept youth members of the ages for which it has been licensed. At no time shall the number of youth members in attendance exceed the number for which the Neighborhood Youth Organization has been licensed.

C. Admission procedures must be completed prior to the youth member's attendance at the Neighborhood Youth Organization, and must include completion of the registration information for inclusion in the youth member's record, as required in rule section 2.708.

2.716 GUIDANCE AND DISCIPLINE

A. Corporal punishment as defined in section 22-1-140, C.R.S. (2023), is not allowed.

B. Separation, when used as guidance or discipline, must be brief and appropriate for the youth member's age and circumstances. The youth member must be in a safe, lighted, well-ventilated area and be within hearing and vision of an employee. The youth member must not be isolated in a locked room, bathroom, closet, or pantry.

C. Verbal abuse or derogatory remarks about the youth member is not permitted.

D. Authority to provide discipline must not be delegated to other youth members or youth employees.

E. Youth members must not be denied food or water as a form of guidance or discipline.

2.7098~~7.720.81~~ YOUTH RECORDS ~~[Eff. 4/1/11]~~

A. The central administrative facility or Neighborhood Youth Organization site or Neighborhood Youth Organization's central headquarters mustshall maintain and update annually a record foron each youth member that includes:

1A. The youth member's full name, age, current address, date of birth, and enrollment datemembership.

2B. Names, addresses, and telephone numbers, which may include cell phone number(s), pagers, fax, and e-mail addresses of parents or legal guardians.

3C. Any special instructions as to how the parents or guardians can be reached during the hours the youth member is at the Neighborhood Youth Organization.

4D. Names, addresses, and telephone numbers of persons who can assume responsibility for the youth member in the event of an emergency if parents or guardians cannot be reached immediately.

5E. A dated, written authorization by a parent or legal guardian for:

a1. The youth members member to attend and be a member of the Neighborhood Youth Organization and to arrive and depart without parental or legal guardian supervision.

b2. Emergency medical care signed and submitted annually by the parent or guardian.

c. Signed authorization for the Neighborhood Youth Organization to provide transportation to and from the Neighborhood Youth Organization.

d3. Signed authorization for the youth member to participate in field trips and to participate in program activities, listing any possible exclusions.

6F. Reports of critical incidents including, but not limited to, serious injuries and accidents occurring during care that result in medical attention, admission to the hospital, or death of a youth member.

7G. The parent(s) or guardian(s) must provide a self-reported, complete health history for the youth member, including communicable diseases, chronic illnesses or injuries, immunization history, known drug reactions or allergies, medication records, special dietary needs, and health care plansInformation regarding food borne allergies shall be obtained from all youth members and shall be referenced when preparing or serving food to youth members to prevent allergic reactions.

2.71009.720.82 STAFF EMPLOYEE RECORDS [Eff. 4/1/11]

A. The Neighborhood Youth Organization mustshall maintain a record for each adult employeestaff member, paid or volunteer, that includes the following:

1. Name, address, and birth date of the individual.

2. The date that the employeestaff member beganwas employmented withby the Neighborhood Youth Organization.

3. Name, address, and daytime telephone number, which may include cell phone numbers, pager numbers, fax numbers and e-mail address, of the person(s) to be notified in the event of an emergency.

4. Record and verification of the employee's staff member's training, education, and experience.

5. Copies of First-Aid and Cardiopulmonary Resuscitation (CPR) certification or other certification confirming the qualifications for the responsibilities assumed at the Neighborhood Youth Organization, which may include copies of driver's licenses, college transcripts, and diplomas.

6. Training completion certificates.

76. Trails child abuse and neglect records request A child abuse and neglect and a criminal record check request for all employees muststaff shall be completed and the results must be on file at the Neighborhood Youth Organization or the Neighborhood Youth Organization's administrative headquarters pursuant to rule sections 2.12016 and 2.12117 of the "General Rules for Child Care Facilities."General Rules sections 7.701.32 and 7.701.33. Verification that a criminal record check has been performed and updated every two years with the Colorado Bureau of Investigation is in process, and a copy of the results of the staff member's criminal record check.

87. Verification that a review of the State Department's automated system for reporting youth abuse and neglect has occurred or is in process.

B. Each employee's staff member's personnel file mustshall contain all required information within thirty (30) calendar days of the first day of employment.

PERSONNEL

2.711107.720.41 GENERAL REQUIREMENTS FOR ALL PERSONNEL [Rev. eff. 6/1/12]

A. All employees staff and volunteerspersonnel of the Neighborhood Youth Organization mustshall demonstrate an interest in and knowledge of youth development and concern for youth members' well-being.

B. All employeesstaff and volunteers must not be engaged in personnel shall be free from communicable disease and conduct that would endanger the health, safety, or well-being of youth members. Each staff member shall furnish the Neighborhood Youth Organization with information concerning communicable health problems that could affect the staff member's ability to perform the duties of the job assigned.

C. All employeesstaff and volunteers must not consume or be under the influence of any substance that impairs their ability to care for youth members at the Neighborhood Youth Organization.

2.71217.720.4 PERSONNEL POLICIES, ORIENTATION, AND STAFF DEVELOPMENT [Eff. 4/1/11]

A. The duties and responsibilities of each employeesstaff position and the lines of authority and responsibility within the Neighborhood Youth Organization mustshall be in writing.

BA. At the time of employment, employees staff members mustshall be informed of their duties and assigned a supervisor.

CB. Prior to working with youth members, eachthe employee staff member mustshall read and be instructed about the policies and procedures of the Neighborhood Youth Organization, including those relating to proper supervision of youth members and reporting of child abuse. Employees Staff mustmembers shall sign a statement indicating that they have read and understand the Neighborhood Youth Organization's policies and procedures.

2.7132 TRAINING

A. All employees must complete a pre-service building and physical premises safety training prior to working with youth members. This training must include identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, vehicular traffic, handling and , storage of hazardous materials, and the appropriate disposal of bio contaminants.

1. The training is developed and facilitated by the Neighborhood Youth Organization for employees to identify program-specific environmental hazards. Employees must be retrained if there are changes to the building and physical premises.

B. All employees must complete the Department-approved standard precautions training that meets current Occupational Safety and Health Administration (OSHA) requirements prior to working unsupervised with children. This training must be renewed annually.

C. For every thirty (30) or fewer youth members in attendance, there must be at least one (1) employeestaff member on duty who holds a current Department-approved first aid and safety certificate (including Cardiopulmonary Resuscitation (CPR) for all ages of youth) and is responsible for administering first aid and CPR to youth members. Such individuals must be with the youth members at all times when the Neighborhood Youth Organization is in operation. If youth members are at different locations, there must be a first aid and CPR qualified employee staff member at each location.

D. Within thirty (30) calendar days of employment, all employees caring for youth members who are not required by rule to be certified in first aid and CPR, must complete the Department-approved introduction to first aid and CPR module. The module must be renewed every two (2) years.

E. Within thirty (30) calendar days of employment, all employees and regular volunteers must be trained using a Department-approved training about child abuse prevention, which includes common symptoms and signs of child abuse, how to report, where to report, and when to report suspected or known child abuse or neglect. This training must be renewed annually.

C. All full time staff shall be required to receive CPR and First Aid certification within the first sixty (60) calendar days of employment at their own expense or as arranged by the Neighborhood Youth Organization.

D. All staff shall complete training in universal precautions within the first three (3) months of employment at their own expense or as arranged by the Neighborhood Youth Organization.

2.7143 7.720.42 VOLUNTEERS AND VISITORS [Eff. 4/1/11]

A. If volunteers are used by the Neighborhood Youth Organization, There mustshall be a clearly established policy for volunteers in regarding to their function, orientation, training, and supervision.

BA. Volunteers mustshall have qualifications suitable to the tasks assigned and be appropriately trained for the position.

CB. Individuals who volunteer less than five (5) days pera month mustshall be: 1. directly supervised by a program director or program leader and cannot be left alone with youth members.

2. Given instruction as to the Neighborhood Youth Organization's policies and procedures.

DC. Individuals who volunteer more than five (5) days aper month must have the same background checks as employeesstaff, pursuant to rule sections 2.116120 and 2.12117 of the "General Rules Regulating Child Care Facilities," and do not need to be directly supervised with youth members. shall be:

1. Appropriately trained for the position; and,

2. Have the same background check as staff pursuant to Section 7.720.41, D; and,

3. Section 7.701.33, D, 5 or 6, shall be referenced to determine whether a conviction requires that the individual not be allowed to volunteer or the conviction requires reporting to the Division of Child Care.

ED. Visitors mustand youth members shall always be supervised by an employeestaff member.

7.720.5NEIGHBORHOOD YOUTH ORGANIZATION SERVICES

2.715 47.720.51 ADMISSION PROCEDURE [Eff. 4/1/11]

A. Prior to attendanceadmission, the parent(s)' or legal guardian('s) must provide signed authorization for the youth member to participate in the programs and services of the Neighborhood Youth Organization arrive or depart without parental or legal guardian supervision shall be obtained.

B. The Neighborhood Youth Organization can only accept youth members only of the ages for which it has been licensed. At no time shall the number of youth members in attendance exceed the number for which the Neighborhood Youth Organization has been licensed certified by the fire department.

C. Admission and membership procedures must shall be completed prior to the youth member's attendance at the Neighborhood Youth Organization, and mustshall include completion of the registration information for inclusion in the youth member's record, as required in rule section 2.70987.720.81.

2.7165 7.720.52 GUIDANCE AND DISCIPLINE [Eff. 4/1/11]

A. Corporal or other harsh punishment as defined in section 22-1-140(2)(a), C.R.S. (2023), including, but not limited to, pinching, shaking, spanking, punching, biting, kicking, rough handling, hair pulling, or any humiliating or frightening method of guidance shall is not be allowed.

B. Separation, or time-out, when used as guidance or discipline, must shall be brief and appropriate for the youth member's age and circumstances. The youth member mustshall be in a safe, lighted, well-ventilated area and be within hearing and vision of a staff member. The youth member must shall not be isolated in a locked room, bathroom, closet, or pantry.

C. Verbal abuse orand derogatory remarks about the youth member isare not permitted.

D. Authority to provide guidance and/or discipline mustshall not be delegated to other youth members or youth employees.

E. Youth members mustshall not be denied food or water as a form of guidance or discipline.

~~7.720.53 Records and Reporting [Eff. 4/1/11]~~

~~Each Neighborhood Youth Organization shall develop:~~

~~A. A system of gathering, recording, and responding to complaints; and,~~

~~B. A method and a training for employees on reporting known or suspected child abuse; and,~~

~~C. A method of record keeping for staff, volunteer, visitor, youth member and other program files.~~

7.720.6 PROGRAM ACTIVITIES

2.7176~~7.720.61~~ FIELD TRIPS ~~[Eff. 4/1/11]~~

A. The program may include field trips, where youth members and employeesstaff leave the Neighborhood Youth Organization to visit sites in the community.

1. Youth members mustshall be actively supervised at all times.

2. An accurate itinerary mustshall remain at the headquarters, office, primary, or temporary site of the Neighborhood Youth Organization.

3. During a field trip, the employeesstaff mustshall have the following information with them:

a. Each youth member's emergency contact information; and~~,~~

b. The written authorization from parent(s) or guardian(s) for emergency medical care.

B. During a field trip, a list of all youth members and employeesstaff on the field trip shall be kept at the headquarters or site of the Neighborhood Youth Organization.

C. During all field trips, employeesstaff mustshall bring a First Aid kit.

D. During all field trips, youth members mustshall have access to water and toilet facilities.

E. During all field trips, employees ~~staff~~ mustshall carry with them information regarding the nearest health care facility.

F. Field trip locations mustshall be accessible to emergency medical service.

2.7187~~7.720.54~~ TRANSPORTATION ~~[Eff. 4/1/11]~~

A. Transportation provided by the Neighborhood Youth Organization

1. The Neighborhood Youth Organization is responsible for any youth members it transports ~~and mustshall abide by applicable State and Federal motor vehicle laws~~.

2. The Neighborhood Youth Organization mustshall obtain written permission from parents or guardians for any transportation of their youth member.

3. Youth members mustshall not be permitted to ride in the front seat of a vehicle. unless they are secured in a constraint system that conforms to all applicable Federal Motor Vehicle Safety Standards based on the youth member's weight and size.

4. Youth members mustshall be loaded and unloaded out of the path of moving vehicles.

5. Youth members mustshall remain seated while the vehicle is in motion. Youth members mustshall not be permitted to stand or sit on the floor of a moving vehicle and their arms, legs, and heads shall remain inside the vehicle at all times.

6. Prior to a field trip or other excursion, the Neighborhood Youth Organization shall obtain information on liability insurance from parent(s)/guardian(s) and employeesstaff who transport youth members in their own cars and verify that all drivers have valid driver's licenses.

7. Attendance must be verified as youth members enter and exit the vehicle to ensure all youth members are accounted for.

B. Requirements for Vehicles

1. Any vehicle used for transporting youth members to and from the Neighborhood Youth Organization or during program activities shall meet the following requirements:

a. The vehicle mustshall be enclosed and have working door locks.

b. The seats of the vehicle mustshall be constructed and installed according to the vehicle manufacturer's specifications.

c. The vehicle mustshall be kept in satisfactory condition to ensureassure the safety of occupants. Vehicle tires, brakes, and lights mustshall meet safety standards set by the Colorado Department of Revenue, Motor Vehicle Division.d. Seating mustshall be comfortable, with a seat of at least ten (10) inches wide for each youth m

de. The Neighborhood Youth Organization must not transport more youth members than any vehicle is able to safely accommodate when child restraint systems and seat belts are properly installed in the vehicle; and;

ef. Modifications to vehicles including, but not limited to, the addition of seats and seat belts must be completed by the manufacturer or an authorized representative of the manufacturer. Documentation of such modifications must be available for review.

2. Any child transported must be properly restrained in a child restraint system that meets the requirements of the Colorado child passenger safety law laws at sections 42-4-236 and 42-4-237, C.R.S., that requires:In passenger vehicles, which include automobiles, station wagons and vans with a manufacturer's established capacity of sixteen (16) or fewer passengers and less than 10,000 pounds, the following is required

a. Each youth shall be restrained in an individual seat belt.Youth members under eight (8) years of age who are being transported, must be properly restrained in a child restraint system, according to the vehicle and child restraint system manufacturer's instructions.

b. Youth members who are at least eight (8) years of age but less than sixteen (16) years of age that are being transported, must be properly restrained in a safety belt or child restraint system according to the vehicle and child restraint system manufacturer's instructions.

(1) Children who meet the requirements to be restrained in a safety belt must be instructed and monitored to keep the seat belt properly fastened and adjusted.

cb. Two (2) or more youth members mustshall never be restrained in one (1) seat belt .or child restraint system.

c. Lap belts shall be secured low and tight across the upper thighs and under the belly.

d. Youth shall be instructed and required to keep the seat belt properly fastened and adjusted.

3. In vehicles with a manufacturer's established capacity of sixteen (16) or more passengers, seat belts for passengers are not required, but shall be used if provided.

4. There mustshall be a First-Aid kit in all vehicles.

C. Requirements for Drivers of Vehicles

1. All drivers of vehicles transporting youth members must operate the vehicle in a safe and appropriate manner. shall comply with applicable laws of the Colorado Department of Revenue, Motor Vehicle Division, and ordinances of the municipality in which the Neighborhood Youth Organizationyouth care program is operatesd.

2. All drivers of vehicles owned or leased by the Neighborhood Youth Organization in which youth members are transported mustshall have a current Department-approved First Aid and safety certificate that includes Cardiopulmonary Resuscitation (CPR) for all ages of youth.

3. The driver must ensure that a complete First-Aid Kit is in the vehicle.

43. The driver mustshall ensure that all doors are secured at all times when the vehicle is moving.

54. The driver must make a good-faith effort to ensureshall periodically check that each youth member is properly belted throughout the trip.

6. The driver must not eat or use a cellular or other mobile device while driving.

7. All drivers must be at least twenty (20) years of age.

8. Drivers must complete a minimum of four (4) hours of driver training prior to transporting youth members. The driver training curriculum may be developed and administered by the Neighborhood Youth Organization and must include at a minimum: behind the wheel training; participant transport attendance procedures, including taking attendance at the destination; managing behavioral issues; loading and unloading procedures; daily vehicle inspection procedures; proper tire inflation; emergency equipment and how to use it;

accident procedures; passenger illness procedures; procedures for backing up; and vehicle evacuation.

a. Documentation of driver training must be available for review.

7.720.7 BUILDING AND FACILITIES

2.71987.720.71 FACILITY REQUIREMENTS [Eff. 4/1/11]

Each Neighborhood Youth Organization mustshall maintain and post the appropriate fire and health inspection certificates.

7.720.72 Food [Eff. 4/1/11]

A. Areas used for food preparation, dish and utensil washing, and storage shall be in compliance with the requirements of the Colorado Department of Public Health and Environment or its local unit.

B. Youth member dietary allergy information gathered during youth member admission shall be referenced when preparing food for any and all youth members.

2.720197.720.73 FIRE AND OTHER SAFETY REQUIREMENTS [Rev. eff. 6/1/12]

A. General Requirements

1. Buildings mustshall be kept in good repair and maintained in a safe condition.

2. Major cleaning involving the use of household or industrial cleaners is prohibited in rooms presently occupied by youth members.

3. Volatile substances such as gasoline, kerosene, fuel oil, and oil-based paints, firearms, explosives and other hazardous items mustshall be stored away from the area used for youth memberscare and be inaccessible to youth members.

4. Employees Staff and volunteers are prohibited from carrying firearms and explosives on the licensed premises, both indoor and outdoor, and in any vehicle in which youth members are transported.

54. Combustibles such as cleaning rags, mops, and cleaning compounds mustshall be stored in well-ventilated areas separated from flammable materials and stored in areas inaccessible to youth members.

65. Closets, attic, basement, cellar, furnace room, and exit routes mustshall be kept free from accumulation of extraneous materials that could cause or fuel a fire or hinder an escape or evacuation.

76. All heating units, whether gas or electric, mustshall be installed and maintained with safety devices to prevent fire, explosions, and other hazards. No open-flame gas or oil stoves, unscreened fireplaces, hot plates, or unvented heaters may be used for heating purposes. All heating elements, including hot water pipes, mustshall be insulated or installed in such a way that youth members cannot come into contact with them. Nothing flammable or combustible may be stored within three (3) feet of a hot water heater or furnace.

87. Indoor and outdoor equipment, materials, and furnishings mustshall be sturdy, safe and free of hazards.

98. Equipment, materials, and furnishings, including durable furniture such as tables and chairs, mustshall be stored in a manner that is safe for youth members.

109. Extension cords cannot be used in place of permanent wiring.

1110. Corridors, halls, stairs, and porches mustshall be adequately lighted. Operable battery-powered or solar lights mustshall be provided in locations readily accessible to employeesstaff in the event of electric power failure.

B. Fire Safety

A fire safety certificate shall be on file for each Neighborhood Youth Organization or at a central location.

BC. Emergency and Disaster PreparednessDrills

1. Each staff member and volunteer of the Neighborhood Youth Organization shall be trained in fire safety.

12. Fire exit drills mustshall be held often enough that all occupants are familiar with the drill procedure and their conduct during a drill is a matter of established routine. Fire drills mustshall be consistent with local fire department procedures. A record of fire drills held over the past twelve (12) months, including date and time of drill, number of adults and youth participating, and the amount of time taken to evacuate, shall be maintained at the Neighborhood Youth Organization site.

23. Drills mustshall be held at unexpected times and under varying conditions to simulate the unusual conditions of an actual fire.

34. Drills mustshall emphasize orderly evacuation under proper discipline rather than speed. No running or horseplay should be permitted.

45. Drills mustshall include suitable procedures for ensuring that all persons in the building or all persons subject to the drill participate.

56. Fire alarm equipment mustshall be used regularly in the conduct of fire exit drills.

67. Tornado and emergency evacuation and lock down drills mustshall be held often enough that all occupants are familiar with the drill procedure and their conduct during a drill is a matter of established routine. A record of these drills held over the past twelve (12) months shall be maintained at the Neighborhood Youth Organization site.

7. A record of all emergency drills held over the past twelve (12) months must be maintained at the Neighborhood Youth Organization site, pursuant to rule section 2.705.

…

COLORADO
Department of Early Childhood

Rule Author/Division Director: Amanda Schoniger - CDEC Carin Rosa	Email(s): Amanda.Schoniger@state.co.us, Carin.Rosa@state.co.us
Program/Division: DELLA / Family Child Care Homes	CDEC Tracking No.: 2023-05-008
CCR Number(s): 8 CCR 1402-1 (CDHS: 12 CCR 2509-8)	SOS Tracking No.:

RULEMAKING PACKET

Reason and Justification of the proposed rule or amendment(s):	Multiple/Other If there are "Multiple/Other" reasons, please explain: With the creation of the Department of Early Childhood, DELLA is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. The department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for child care programs providing less than twenty-four (24) hour care that create standards and regulations for these child care programs. These revisions incorporate Department of Early Childhood rule numbering, align with state and federal statutes, and make technical changes. In addition this package seeks to expand qualification options, allow more flexibility in ages of children served or count in a provider's capacity, decrease barriers to operating programs with outdoor space challenges. These rules expand health, safety and professional development for providers and staff and organize the rules into a consumer-friendly format. This comprehensive draft rule package was developed as part of a broad stakeholder engagement that included the voices of parents, providers, early childhood professionals, advocates, the Governor's Office, state departments, and other partners over the last three years. This package also incorporates infant and family child care action plan recommendations.
Provide a description of the proposed rule or amendment(s) that is clearly and simply stated, and what CDEC intends to accomplish:	The department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for child care programs providing less than twenty-four (24) hour care that create standards and regulation for these child care programs. This comprehensive draft rule package was developed as part of a broad stakeholder engagement conducted over a three-year period and incorporates infant and family child care action plan recommendations. CDEC intends to expand qualification options, and decrease barriers to operating programs, including outdoor space requirements and increase infant, toddler and school age spots in licensed Family Child Care Homes. CDEC intends to expand the health, safety and professional development

	requirements. In order to help Family Child Care Homes identify all rules applicable to their license type, this package has also been reorganized into a more consumer-friendly format, and duplicative rules were removed.
Statutory Authority: (Include Federal Authority, if applicable)	These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S.; and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 *et seq.* (the "APA"), C.R.S.; the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101 *et seq.* (the "Early Childhood Act"), C.R.S.; the Child Care Licensing Act, sections 26.5-5-301, *et seq.*, C.R.S.; and Child Care Development and Block Grant Act of 2014, 42 U.S.C. sec. 9858e, and section 26.5-4-110(3), C.R.S.
Does the proposed rule or amendment(s) impact other State Agencies or Tribal Communities?	☐ Yes ☑ No If Yes, identify the State Agency and/or Tribal Community and describe collaboration efforts:
Does the proposed rule or amendment(s) have impacts or create mandates on counties or other governmental entities? (e.g., budgetary requirements or administrative burdens)	☐ Yes ☑ No If Yes, provide description:
Effective Date(s) of proposed rule or amendment(s): (**E**mergency/**P**ermanent)	☐ Mandatory ☑ Discretionary (E) Effective Date: N/A (P) Effective Date: 3/1/2024 (E) Termination Date: N/A
Is the proposed rule or amendment(s) included on the Regulatory Agenda?	☑ Yes ☐ No If no, please explain:
Does the proposed rule or amendment(s) conflict, or	☐ Yes ☑ No

are there inconsistencies with other provisions of law?	If Yes, please explain:
Does the proposed rule or amendment(s) create duplication or overlapping of other rules or regulations?	☐ Yes ☑ No If Yes, explain why:
Does the proposed rule or amendment(s) include material that is incorporated by reference[1]?	☐ Yes ☑ No If Yes, provide source:
Does the proposed rule or amendment(s) align with the department's rulemaking objectives? Choose all that apply.	☑ Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services. ☑ Decrease duplication and conflicts with implementing programs and providing services. ☑ Increase equity in access and outcomes to programs and services for children and families. ☑ Increase administrative efficiencies among programs and services provided by the department. ☑ Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.

Rulemaking Proceedings

Type of Rulemaking: Emergency or Permanent[2] [Permanent Tier I or Tier II]	Permanent Tier I
Stakeholder Engagement and Data/Research:	List of activities and dates:

[1] Incorporation by Reference is all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, pursuant to section 24-4-103(12.5), C.R.S.

[2] Tier I is used for proposed rule or amendment(s) that have substantive changes, require substantial stakeholder engagement, and will be considered at two Public Rulemaking Hearings (PRH). The first PRH is held for discussion, and the second PRH is held to consider adoption. Tier II is used for proposed rule or amendment(s) that include technical changes, do not require substantial stakeholder engagement, and will be considered at only one Public Rulemaking Hearing (PRH) for adoption.

Examples: Webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests, surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	**Infant Care/FCCH Strategic Plan Legislation-** January 10, 2019- 4:00-4:30 Attendees- lauren.morales@state.co.us Brett Reeder - CDPHE (He | Him | His) Carin Rosa - CDEC Mewhinney - CDHS, Erin Heather Craiglow - CDEC Kleats - CDHS, Ian Kristina Heyl - CDEC Lindsey Dorneman - CDEC Lisa Castiglia - CDEC stacey.kennedy@state.co.us **Family Child Care Reg & Fire Safety** February 23, 2021 March 19, 2021 June 16, 2021 Attendees- Chivon Baker - CDPS aidan@myvillage.com Aly Schmidt andy.true@state.co.us caitlin@fullswingpr.com caitlin@myvillage.com Carin Rosa - CDEC Chris Brunette - CDPS Christina Walker Melissa Lineberger - DOR riley@coloradokids.org scott.groginsky@state.co.us Todd Jorgensen - HCPF (He | Him | His) Anne-Marie Braga - CDHS (She | Her | Hers) Mewhinney - CDHS, Erin Mary Alice Cohen - CDEC Adam Zarrin - GovOffice Mike Morgan - CDPS

	bbaker@co.jefferson.co.us Robert Sontag - CDPS steven.parker@arvadafire.com **Initial Revision Workgroup Meetings-** January 27, 2020- 2:00-3:50 February 10, 2020- 2:00-3:50 February 24, 2020- 2:00-3:30 March 10, 2020- 9:00-10:50 March 23, 2020- 1:00-2:50 March 30, 2020- 2:00-2:50 June 20, 2020- 1:00-2:50 July 13 2020- 1:00-2:50 July 27 2020-1:00-2:50 August 10 2020- 1:00-2:50 August 24 2020- 1:00-2:50 September 28 2020- 1:00-2:50 October 12 2020- 1:00-2:50 November 23 2020- 1:00-2:50 December 12 2020- 1:00-2:50 May 24, 2021- 12:45-1:50 May 27, 2021- 11:00AM-12:20PM June 3, 2021- 12:30-1:50 June 7 2021- 12:30-1:50 June 10 2021 - 1:30-2:50 June 14, 2021- 2:00-4:50 June 16 2021- 11:-12:20 June 22, 2021 10:30-12:20 June 22, 2021- 1:00-1:30 June 23, 2021- 2:45-3:30 June 24 2021- 12:00-1:50 July 12 2021- 2:00-2:50 July 20, 2021- 11:11:50 September 23, 2021- 9:00-9:50 October 5, 2022- 10:00-12:00 October 19, 2022- 9:30-12:00 November 3, 2022- 3:00-5:00 November 8, 2022- 12:30-3:00

December 2, 2022- 11:00-1:30
January 13, 2023- 12:00-3:30
January 19, 2023- 9:00-11:30
January 27, 2023- 1:00-4:00

Attendees-
Amanda Schoniger - CDEC
Amy Gammel - CDPHE
Carin Rosa - CDEC
Deborah Gray - CDEC
Mark Browne - CDEC
McKenzie, Marlene
Sandy Hung
Tanya Estrada - CDEC
Teresa Ribble
theresa@healthychildcareco.org

Large Stakeholder meetings-

June 21, 2021- 12:00-2:00
July 21, 2021- 2:30-4:15

Attendees-
Amanda Schoniger - CDEC
Amber Bilby
Amy Gammel - CDPHE
Carin Rosa - CDEC
Chris Brunette - CDPS
cochildcareconsultations@outlook.com
cwalker@claytonearlylearning.org
Holmes - CDHS, Cybil
Greer - CDEC, Danielle
elizabeth@myvillage.com
Emily Bash - CDPHE
Emily Chavez - CDEC
emily@denverearlychildhood.org
Heather Nara
jacy@coloradokids.org
Kristen Lang - CDEC

	McKenzie, Marlene Meghan Leclerc - CDEC Michelle Mackin-Brown - CDEC Michelle Snively-Gonzalez - CDEC misscarries@yahoo.com sedlaka@nwf.org Tanya Estrada - CDEC Tanya O'Connor - CDPHE (She | Her | Hers) Teresa Ribble theresa@healthychildcareco.org Naomi Steenson - CDPHE Angela Ben-Zekry - CDEC jstricker@cityofgolden.net kathy@clearperceptions.com melissa@coloradokids.org bbaker@co.jefferson.co.us bill@coloradokids.org Deborah Gray - CDEC houstonl@nwf.org Michael Williams riley@coloradokids.org steven.parker@arvadafire.com tgarcia@earlylearningventures.org **Large Stakeholder meetings-** March 18 2023 : 9-11 March 7 2023: 10-12 February 9 2023: 2:30-5 Attendees- Amanda Schoniger - CDEC <amanda.schoniger@state.co.us> amberbilby@outlook.com, Gammel - CDPHE, Amy" <amy.gammel@state.co.us> Angela Ben-Zekry - CDEC <angela.ben-zekry@state.co.us> bbaker@co.jefferson.co.us bill@coloradokids.org Barbara Wacker <bwacker@earlylearningventures.org> Carin Rosa - CDEC <carin.rosa@state.co.us> Chris Brunette - CDPS <chris.brunette@state.co.us> cochildcareconsultations@outlook.com Courtney Tomlin - CDPHE <courtney.tomlin@state.co.us>

	cwalker@claytonearlylearning.org, Dawn Alexander <dalexander@coloradoecea.org> Greer - CDEC, Danielle" <danielle.greer@state.co.us> Deborah Gray - CDEC <deborah.gray@state.co.us> Elena Kemp - CDEC <elena.kemp@state.co.us> elizabeth@myvillage.com Emily Bash - CDPHE <emily.bash@state.co.us> Emily Chavez - CDEC <emily.chavez@state.co.us> emily@denverearlychildhood.org esackett@earlylearningventures.org Heather Nara <heather.nara@mesacounty.us> houstonl@nwf.org jstricker@cityofgolden.net kathy@clearperceptions.com Kristen Lang - CDEC <kristen.lang@state.co.us> Lauren Corboy <laurenc@coloradokids.org> libby.goertz@state.co.us Matter - CDEC, Lisa" <lisa.matter@state.co.us> melissa@coloradokids.org Michelle Mackin-Brown - CDEC <michelle.mackin-brown@state.co.us> Michelle Snively-Gonzalez - CDEC <michellel.gonzalez@state.co.us> Mike Williams <mike.williams@southmetro.org> misscarries@yahoo.com Naomi Steenson - CDPHE <naomi.steenson@state.co.us> riley@coloradokids.org sedlaka@nwf.org sgreer@cityofgolden.net steven.parker@arvadafireco.gov Tanya Estrada - CDEC <tanya.estrada-trujillo@state.co.us> Tanya O'Connor - CDPHE (She | Her | Hers)" <tanya.oconnor@state.co.us> Teresa Ribble - CDEC <teresa.ribble@state.co.us> tgarcia@earlylearningventures.org theresa.rapstine@childrenscolorado.org theresa@healthychildcare.org Communications request through CDEC to email all stakeholders with a link to provide public comment. Public comment feedback posted for 30 days. Responding to all comments received during the 30 days. Updating rules to incorporate public comments if necessary. Request for public comment sent out Jun 20, 2023 through Jul 25, 2023. https://cdec.colorado.gov/public-notice-information https://docs.google.com/forms/d/1mYnrAyciqR-EpbTeblZNX7864yDtaFLoUWt4I2MnbwA/edit Location of public folder containing stakeholder engagement materials for public retention: (link)

	2.300 FCCH PUBLIC COMMENT .docx FCCH Public Comment- PUBLIC https://docs.google.com/forms/d/1mYnrAyciqR-EpbTeblZNX7864yDtaFLoUWt4l2MnbwA/edit#responses 8 - DELLA FCCH: CDEC No. 2023-05-008
Assistant Attorney General Review:	Aug 9, 2023
RAC County Subcommittee Review Date (if required):	Nov 2, 2023
Rules Advisory Council (RAC) Review Date:	Nov 9, 2023
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	Nov 17, 2023 (Discussion) Dec 29, 2023 (Adoption)

Regulatory and Cost Benefit Analysis

1. **Community Impact:** Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations, such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

   With the creation of the Department of Early Childhood, DELLA is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. These revisions incorporate Department of Early Childhood rule numbering, align with state and federal statutes, and make technical changes.

   This comprehensive draft rule package was developed as part of a broad stakeholder engagement conducted over a three-year period and incorporates infant and family child care action plan recommendations. Licensed Family Child Care Home Providers will benefit from the expanded qualification options, and the decreased barriers to operating programs, including outdoor space requirements proposed in this rule package. Families and Licensed Family Child Care Home providers will benefit from the additional flexibility on the ages of children served, including reducing the age of the provider's own children that count toward capacity. Children will benefit from the expanded health and safety requirements proposed in this rule package. In order to help Family Child Care Homes identify all rules applicable to their license type, this package has also been reorganized into a more consumer-friendly format, and duplicative rules were removed.

The Department will translate the final version of the rules and regulations into Spanish. The Administrative Guides and resource documents that assist with compliance with these rules will also be translated into Spanish.

2. **Quality and Quantity:** Provide a description of the probable quantitative and qualitative impact on persons affected by the proposed rule or amendment(s), and comparison of the probable costs and benefits of implementation versus inaction. What are the short- and long-term consequences of the proposed rule or amendment(s).

These revisions incorporate Department of Early Childhood rule numbering, align with state and federal statute changes, and make technical corrections. These changes must be incorporated to renumber rules consistent with the move to the Department of Early Childhood and comply with state and federal statutes. This package incorporates stakeholder feedback that includes the voices of parents, providers, early childhood professionals, advocates, the Governor's Office, state departments, and other partners. This package also incorporates infant and family child care action plan recommendations.

The short and long-term consequence of not promulgating these rules is that the Department would be out of compliance with Federal and State requirements, and family child care homes would not receive the benefits of the flexibility allowed by these revisions.

3. **Potential Economic Benefits/Disadvantages:** What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?

This rule package is an economic benefit for both families and family child care home businesses as it ensures that parents have safe child care options for their child and can continue to work, and family child care homes have the ability to care for more children, including infants and toddlers, and to remain in operation. The benefits included in this package that support this effort are the additional infant and toddler spots in Family Child Care homes with decreasing age from 24 months to 18 months, additional school-age spots with decreasing the age of the provider's own children that count in the licensed capacity, adding the outdoor space hardship will allow for potential providers that could not meet outdoor space requirements to become licensed.

The additional health and safety requirements and training may be a barrier to programs operating due to the cost. In the few areas where additional requirements have been proposed, the Department has tried to minimize the impact by providing required training free of cost and allowing them to count for both required ongoing professional development and quality rating and improvement requirements.

4. **Fiscal Impacts:** What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate "not applicable."

Department	None because there are no costs to the Department for implementing these rules.
Local Governments/	

Counties	None because nothing in the rule revision creates costs for counties.
Providers	Licensed family child care homes are governed by these rules and will both benefit from and bear the burden of these rules. There will be minimal cost to child care providers as the additions to the package are training requirements in compliance with State and Federal Statutes. Training is available for free online in the Professional Development Information System.
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	None because nothing in the rule revision creates cost for community partners.
Other State Agencies	None because nothing in the rule revision creates cost for other State Agencies.
Tribal Communities	None because nothing in the rule revision creates cost for Tribal Communities.

5. **Evaluation:** How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

   The Department will annually monitor programs for compliance with these regulations and allow for a 6 month consultation period for rules not related to health and safety for providers to come into compliance with.

6. **Comparative Analysis:** Provide at least two alternatives to the proposed rule or amendment(s) that can be identified, including the costs and benefits of pursuing each of the alternatives.

   a. The department considered leaving the rules as already promulgated, but the Department is required to move these rules from the Colorado Department of Human Services rules to the Department of Early Childhood.
   b. The Department considered seeking legislative changes to reflect some of the requirements in this rule package, it was determined that the appropriate level to make the necessary revisions is at the Department of Early Childhood Executive Director rule-making level. In addition, the Department must move these rules to the Department of Early Childhood.
   c. There are no alternatives because these rules are considered minimum requirements for health and safety. Requirements deemed unnecessary were removed from the rule package.

7. **Comparative Analysis:** Are there less costly or less intrusive methods for achieving the purpose of the proposed rule or amendment(s)? Explain why those options were rejected.

With the creation of the Department of Early Childhood, DELLA is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. These rule revisions incorporate Department of Early Childhood rule numbering, comply with state and federal statutes, and make technical changes only. The Department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for child care programs providing less than twenty-four (24) hour care that create standards and regulations for these child care programs. There is no other option to achieve the objective of these revisions.

COLORADO
Department of Early Childhood

Rule Author/Division Director: Amanda Schoniger / Carin Rosa	Email(s): Amanda.Schoniger@state.co.us, Carin.Rosa@state.co.us
Program/Division: DELLA / Neighborhood Youth Organizations	CDEC Tracking No.: 2023-05-007
CCR Number(s): 8 CCR 1402-1 (CDHS: 12 CCR 2509-8)	SOS Tracking No.:

RULEMAKING PACKET

Reason and Justification of the proposed rule or amendment(s):	Multiple/Other If there are "Multiple/Other" reasons, please explain: With the creation of the Department of Early Childhood, DELLA is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. The department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for child care programs providing less than twenty-four (24) hour care that create standards and regulations for these child care programs. These revisions incorporate Department of Early Childhood rule numbering, align with state and federal statutes, and make technical changes. In addition, this package seeks to incorporate legislation from Senate Bill 22-064, allows more flexibility in the ages of children served, and allows attendance tracking and operation out of leased buildings for licensed Neighborhood Youth Organizations. This package will also increase health, safety, and professional development requirements for youth members and employees at Neighborhood Youth Organizations, and reorganizes the rules into a more consumer-friendly format. This comprehensive draft rule package was developed as part of a broad stakeholder engagement that included the voices of parents, providers, early childhood professionals, advocates, state departments, and other partners over the last two years. This package also incorporates legislation from Senate Bill 22-064.
Provide a description of the proposed rule or amendment(s) that is clearly and simply stated, and what CDEC intends to accomplish:	The Department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for child care programs providing less than twenty-four (24) hour care that create standards and regulations for these child care programs. This comprehensive draft rule package was developed as part of a broad stakeholder engagement that included the voices of parents, providers, early childhood professionals, advocates, state departments, and other partners over the last two years. With these rules, the Department seeks to allow more flexibility for licensed Neighborhood Youth Organizations to serve

	children of younger ages, operate out of leased spaces, track youth members for safety purposes, increase health, safety, and professional development requirements for staff and youth members, and organize the rules into a consumer-friendly format.
Statutory Authority: (Include Federal Authority, if applicable)	Sections 24-4-101, 26.5-1-101, 26.5-1-105(1), and 26.5-5-301, C.R.S.
Does the proposed rule or amendment(s) impact other State Agencies or Tribal Communities?	☐ Yes ☑ No If Yes, identify the State Agency and/or Tribal Community and describe collaboration efforts:
Does the proposed rule or amendment(s) have impacts or create mandates on counties or other governmental entities? (e.g., budgetary requirements or administrative burdens)	☐ Yes ☑ No If Yes, provide description:
Effective Date(s) of proposed rule or amendment(s): (Emergency/Permanent)	☐ Mandatory ☑ Discretionary (E) Effective Date: N/A (P) Effective Date: 3/1/2024 (E) Termination Date: N/A
Is the proposed rule or amendment(s) included on the Regulatory Agenda?	☑ Yes ☐ No If no, please explain:
Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?	☐ Yes ☑ No If Yes, please explain:
Does the proposed rule or amendment(s) create duplication or overlapping of other rules or regulations?	☐ Yes ☑ No If Yes, explain why:

Does the proposed rule or amendment(s) include material that is incorporated by reference[1]?	☑ Yes ☐ No If Yes, provide source: The complete list of reportable communicable illnesses can be found in 6 CCR 1009-1 (Apr. 19. 2023), rules and regulations pertaining to Epidemic and Communicable Disease Control, herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the Colorado Department of Public Health and Environment at http://sos.state.co.us/ccr. Occupational Safety and Health Administration (OSHA) standards for bloodborne pathogens (BBP, 29 CFR 1910.1030) and personal protective equipment (PPE, 29 CFR 1910 Subpart I) herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the These regulations are available at no cost from the Occupational Safety and Health Administration website at https://www.osha.gov/bloodborne-pathogens/worker-protections. Colorado child passenger safety law laws at sections 42-4-236 and 42-4-237, C.R.S.
Does the proposed rule or amendment(s) align with the department's rulemaking objectives? Choose all that apply.	☑ Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services. ☑ Decrease duplication and conflicts with implementing programs and providing services. ☑ Increase equity in access and outcomes to programs and services for children and families. ☑ Increase administrative efficiencies among programs and services provided by the department. ☑ Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.

Rulemaking Proceedings

[1] Incorporation by Reference is all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, pursuant to section 24-4-103(12.5), C.R.S.

Type of Rulemaking: Emergency or Permanent[2] [Permanent Tier I or Tier II]	Permanent Tier I
Stakeholder Engagement and Data/Research: Examples: Webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests, surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	List of activities and dates: **Stakeholder meetings-** May 5, 2021 4:00-5:00 May 6, 2021 2:00-3:50 June 7 2021 2:00-3:50 July 7 2021 10:30-12:20 July 20 2021 10:00-11:00 July 29 2021 10:00-11:50 August 21 2021 10:00-11:50 Communications sent an email to all stakeholders requesting feedback on the NYO's draft rules, and posted the draft rules on our Public Notices webpage. Public comment feedback posted for 25 days. Responding to all comments received during the 25 days, and updating rules to incorporate public comments, if necessary. Request for public comment sent out June 20, 2023, through July 25, 2023. Location of public folder containing stakeholder engagement materials for public retention: https://drive.google.com/drive/folders/1OPQxWictBJUS21pcgurxydno5eNSYp7a
Assistant Attorney General Review:	8/9/23 - 10/25/23
RAC County Subcommittee Review Date (if required):	11/2/23
Rules Advisory Council (RAC) Review Date:	11/9/23
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	11/17/23 (Discussion) 12/29/23 (Adoption)

[2] Tier I is used for proposed rule or amendment(s) that have substantive changes, require substantial stakeholder engagement, and will be considered at two Public Rulemaking Hearings (PRH). The first PRH is held for discussion, and the second PRH is held to consider adoption. Tier II is used for proposed rule or amendment(s) that include technical changes, do not require substantial stakeholder engagement, and will be considered at only one Public Rulemaking Hearing (PRH) for adoption.

Regulatory and Cost Benefit Analysis

1. **Community Impact: Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations, such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?**

   With the creation of the Department of Early Childhood, DELLA is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. These revisions incorporate Department of Early Childhood rule numbering, align with state and federal statutes, and make technical changes.

   Neighborhood Youth Organizations and communities will benefit from the incorporation of legislation from Senate Bill 22-064. Decreasing ages of children allowed in the Neighborhood Youth Organization, allowing attendance tracking, and to operate out of a leased building. Youth will benefit from the expanded health and safety requirements. Staff will benefit from additional professional development requirements.

   The Department will translate the final version of the rules and regulations into Spanish. The Administrative Guides and resource documents that assist with compliance with these rules will also be translated into Spanish.

2. **Quality and Quantity: Provide a description of the probable quantitative and qualitative impact on persons affected by the proposed rule or amendment(s), and comparison of the probable costs and benefits of implementation versus inaction. What are the short- and long-term consequences of the proposed rule or amendment(s).**

   These rule revisions incorporate Department of Early Childhood rule numbering, align with state and federal statute changes, and make technical corrections. These changes must be incorporated to renumber rules consistent with the move to the Department of Early Childhood and comply with state and federal statute. This package also incorporates legislation from Senate Bill 22-064 which allows Neighborhood Youth Organizations more opportunity to serve younger ages of children, track attendance and operate out of leased buildings. The short and long term consequence of not promulgating these rules is that the Department would be out of compliance with statute.

   Neighborhood Youth Organizations governed by these rules will both benefit from and bear the burden of these rules. For example, programs may need to pay staff time to complete additional training requirements.

3. **Potential Economic Benefits/Disadvantages: What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?**

   This rule package is an economic benefit to both Neighborhood Youth Organizations (NYO) and families due to the additional flexibility allowed to serve younger ages of children, and operate out of leased spaces. This creates the potential for more Neighborhood Youth Organizations to become licensed. The development of new NYO facilities will supply more economic growth in the creation of new job opportunities for the early childhood workforce, and give families more choice on where to enroll their children while they work.

   The increased health and safety requirements and training may result in cost for NYO's paying staff to complete the training.

4. **<u>Fiscal Impacts</u>: What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate "not applicable."**

Department	None because there are no costs to the Department for implementing these rules.
Local Governments/ Counties	None because nothing in the rule revision creates costs for counties.
Providers	Licensed Neighborhood Youth Organizations governed by these rules will both benefit from and bear the burden of these rules. There will be minimal cost to Neighborhood Youth Organizations as the additions to the package are training requirements. Majority of the training is available for free online in the Professional Development Information System. Neighborhood Youth Organizations and communities will benefit from the addition to incorporate legislation from Senate Bill 22-064 by allowing Neighborhood Youth Organizations to serve younger children, track attendance, and operate out of a leased building.
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	None because nothing in the rule revision creates cost for community partners.
Other State Agencies	None because nothing in the rule revision creates cost for other State Agencies.
Tribal Communities	None because nothing in the rule revision creates cost for Tribal Communities.

5. **<u>Evaluation</u>: How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).**

   The Department will continue to annually monitor programs for compliance with these regulations along with a 6 month consultation to be in compliance with any rule that is not health and safety related.

6. **<u>Comparative Analysis</u>: Provide at least two alternatives to the proposed rule or amendment(s) that can be identified, including the costs and benefits of pursuing each of the alternatives.**

a. The department considered leaving the rules as already promulgated but the Department is required to move these rules from the Colorado Department of Human Services rules to the Department of Early Childhood.
b. The Department incorporated legislation from Senate Bill 22-064

c. No alternatives because these rules are considered minimum requirements for health and safety. Requirements that were deemed as unnecessary were removed from the rule package.

7. **Comparative Analysis: Are there less costly or less intrusive methods for achieving the purpose of the proposed rule or amendment(s)? Explain why those options were rejected.**

With the creation of the Department of Early Childhood, DELLA is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. These rule revisions incorporate Department of Early Childhood rule numbering, comply with state and federal statute, make technical changes and incorporate legislation from Senate Bill 22-064. The Department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for child care programs providing less than twenty-four (24) hour care that create standards and regulation for these child care programs.

Notice of Proposed Rulemaking

Tracking number

2023-00757

Department

1505 - Department of State

Agency

1505 - Secretary of State

CCR number

8 CCR 1505-11

Rule title

NOTARY PROGRAM RULES

Rulemaking Hearing

Date

12/19/2023

Time

11:00 AM

Location

Please see the Additional Information section for details.

Subjects and issues involved

The Department is considering amendments to the Colorado Department of State Notary Program Rules to ensure the uniform and proper administration, implementation, and enforcement of the Revised Uniform Law on Notarial Acts (RULONA). Specifically, the Department proposes permanent rule revisions necessary to require a notary public to both: (1) inform a customer, before performing a notarial act, of any service that is an additional charge to the notarial act and (2) provide an itemized invoice of each specific charge. Failing to do so will lead to the presumption that the amount charged is solely for the notarial act. If that charge exceeds the statutory limit, it is presumptive evidence of a violation of RULONA. The Department may consider additional rule amendments. Please see attached Notice of Permanent Rulemaking including a Draft Statement of Basis.

Statutory authority

Sections 24-21-527(1), 24-21-527(1)(a), 24-21-527(1)(d), and 24-21-527(1)(e), C.R.S.

Contact information

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Preliminary Draft of Proposed Rules

Colorado Department of State
Notary Program Rules
8 CCR 1505-11

November 15, 2023

Disclaimer:
In accordance with the State Administrative Procedure Act, this draft is filed with the Colorado Department of State and submitted to the Department of Regulatory Agencies.[1]

This is a preliminary draft of the proposed rules that may be revised before the **December 19, 2023,** rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **December 14, 2023.**[2]

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
~~Strikethrough~~	Deletions
[Italic blue font text]	Annotations

Current 8 CCR 1505-11 is amended as follows:

New Rule 2.4 requires a notary public to inform their customer, prior to performing a notarial act, of any service that is an additional charge to the notarial act and to provide an itemized invoice of each specific charge and informs of the consequences of failing to abide by the new requirements:

2.4 ITEMIZATION OF CHARGES

2.4.1 IF A NOTARY PUBLIC CHARGES FOR ANY SERVICE IN ADDITION TO THE NOTARIAL ACT, THE NOTARY PUBLIC MUST:

(A) INFORM THE CUSTOMER OF THE CHARGES BEFORE PERFORMING THE NOTARIAL ACT; AND

(B) PROVIDE AN ITEMIZED INVOICE THAT LISTS EACH SPECIFIC CHARGE.

2.4.2 IF A NOTARY PUBLIC FAILS TO ITEMIZE SPECIFIC CHARGES, THE AMOUNT CHARGED IS PRESUMED TO SOLELY COVER THE NOTARIAL ACT. IF THAT AMOUNT EXCEEDS THE STATUTORY FEE LIMIT IN SECTION 24-21-529, C.R.S., THE INVOICE IS PRESUMPTIVE EVIDENCE OF A VIOLATION OF THE REVISED UNIFORM LAW ON NOTARIAL ACTS.

[1] Sections 24-4-103(2.5) and (3)(a), C.R.S. (2023). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.
[2] Section 24-4-103(4)(a), C.R.S. (2023). "[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing…shall be made available to any person at least five days prior to said hearing."

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State
Christopher P. Beall
Deputy Secretary of State

Notice of Proposed Rulemaking

Colorado Department of State
Notary Program Rules
8 CCR 1505-11

Date of Notice: November 15, 2023
Date and Time of Public Hearing: December 19, 2023, at 11:00 a.m.

I. Hearing Notice

As required by the State Administrative Procedure Act,[1] the Department of State gives notice of proposed rulemaking. The hearing is scheduled for **December 19, 2023, at 11:00 a.m.** in the Red Rocks Conference Room on the 5th floor of the Department of State's office at 1700 Broadway, Denver, CO 80290. **This meeting will be conducted in person and via webinar.** Details regarding how to join the webinar and testify during the hearing are outlined in section VI of this notice.

II. Subject

The Department is considering amendments to the Colorado Department of State Notary Program Rules[2] to ensure the uniform and proper administration, implementation, and enforcement of the Revised Uniform Law on Notarial Acts (RULONA).[3] Specifically, the Department proposes permanent rule revisions necessary to require a notary public to both: (1) inform a customer, before performing a notarial act, of any service that is an additional charge to the notarial act and (2) provide an itemized invoice of each specific charge. Failing to do so will lead to the presumption that the amount charged is solely for the notarial act. If that charge exceeds the statutory limit, it is presumptive evidence of a violation of RULONA.

The Department may consider additional rule amendments including revisions necessary to 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.

A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Statutory Authority

The Department proposes the rule revisions and amendments in accordance with the following statutory provisions:

[1] Section 24-4-103(3)(a), C.R.S. (2023).
[2] 8 CCR 1505-11.
[3] Article 21 of Title 24, Part 5, C.R.S. (2023).

- Section 24-21-527(1), C.R.S., (2023), which authorizes the Secretary of State to "adopt rules to implement this part 5 [the Revised Uniform Law on Notarial Acts] in accordance with article 4 of this title 24 [the State Administrative Procedure Act]."

- Section 24-21-527(1)(a), C.R.S., (2023), which authorizes the Secretary of State to "[p]rescribe the manner of performing notarial acts regarding tangible and electronic records[.]"

- Section 24-21-527(1)(d), C.R.S., (2023), which authorizes the Secretary of State to "[p]rescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public…"

- Section 24-21-527(1)(e), C.R.S., (2023), which authorizes the Secretary of State to "[i]nclude provisions [in rules] to prevent fraud or mistake in the performance of notarial acts[.]"

IV. Copies of Draft Rules

A preliminary draft of the proposed rules is posted on the Colorado Department of State's rules and notices of rulemaking website at: https://coloradosos.gov/pubs/rule_making/hearings/2023/NotaryRulesHearing20231219.html.

You may also contact our office to request an editable electronic copy of the draft rules.

As required by the State Administrative Procedures Act,[4] if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by **December 14, 2023**.

V. Opportunity to Testify and Submit Written Comments

The Department values your feedback in our rulemaking process, and we would very much like to hear your thoughts on the proposed amendments. Please review and consider the attached proposed draft rules.

Everyone will have the opportunity to testify and provide written comments concerning the rule amendments. You may submit written comments to SoS.Rulemaking@coloradosos.gov any time before and during the hearing. If you attend the hearing in person, you may submit written comments to the hearing panel as well. An additional opportunity to comment in writing will be announced at the conclusion of the hearing. Information regarding how to testify via webinar during the hybrid hearing is provided in section VI of this notice.

As soon as possible after receipt, written comments will be posted online at the Department of State website:

https://coloradosos.gov/pubs/rule_making/hearings/2023/NotaryRulesHearing20231219.html.

We will make every effort to redact apparent personal contact information, including home address, email address, and telephone number(s), from submissions before posting the information online, unless otherwise directed by the contributor. All written comments will be added to the official rulemaking record.

[4] Section 24-4-103(3)(a), C.R.S. (2023). "Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing…shall be made available to any person at least five days prior to said hearing."

VI. Webinar and Audio Recording of Hearing

Register for the hybrid hearing
To join and listen to the hearing online, you must register for the webinar: https://register.gotowebinar.com/register/8385757916939918936.

When you register, you must provide your full name and email address. Please provide additional contact information, including your address and telephone number. You may also provide your job title and organization. Lastly, indicate whether you plan to testify during the hearing. When you submit your registration, you should receive a confirmation email including details about how to join the webinar.

Hybrid hearing procedures
After the introduction and a brief summary of the rulemaking, we will open the hearing to testimony as follows:

- For the sake of efficiency, in-person attendees will be called upon first to provide their public comment. We will reference the sign-in sheet provided and individually call upon attendees who wish to provide their testimony. Once we have exhausted the in-person sign-in sheet, we will move forward with the testimony of online attendees.

- Referencing webinar registration records, we will identify and individually unmute online attendees who indicated their intent to testify during the hearing.

- Once we have exhausted that list, we will ask whether any additional attendees wish to testify. In-person attendees may raise their hands to indicate their intention to testify, and online attendees may raise/lower their hand by clicking the "raise hand" icon in their control panel.

- To ensure that the hearing is prompt and efficient, oral testimony may be time limited.

Before the hearing concludes, we will announce an additional opportunity to submit written comments and the associated deadline.

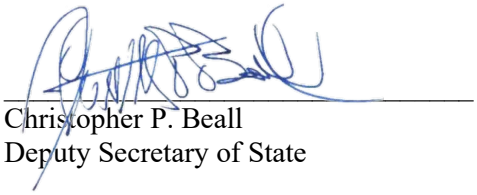
Webinar audio requirements
Please be advised: we strongly encourage attendees to join the webinar through their computer or GoToWebinar app, even if they use their telephone to dial in for audio. To testify during the hearing, it is best to use your computer microphone and speakers or a headset or headphones. As outlined above, we will first receive online testimony from attendees whose registration indicates that they plan to provide testimony and then we will offer attendees the option to raise their hand. If you access the webinar only by telephone, you may not appear in our webinar attendee list, meaning we may not be able to unmute you. Moreover, the "raise hand" icon is only available to attendees who access the webinar by computer or by app.

Audio recording
After the hearing concludes, a recording will be available on our audio broadcasts page here: https://www.coloradosos.gov/pubs/info_center/audioBroadcasts.html.

VII. Office Contact

If you have any questions or would like to submit written comments, please contact the Department Rulemaking Program Assistant at SoS.Rulemaking@coloradosos.gov.

Dated this 15th of November 2023,



Christopher P. Beall
Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State
Christopher P. Beall
Deputy Secretary of State

Draft Statement of Basis, Purpose, and Specific Statutory Authority

Colorado Department of State
Notary Program Rules
8 CCR 1505-11

Filed: November 15, 2023
Revised: November 22, 2023

I. Basis and Purpose

This statement explains proposed amendments to the Colorado Department of State Notary Program Rules. The purpose of the changes is to address a legislative change increasing the statutory maximum for notary fees, as well as to address issues raised in complaints to the Department concerning billing practices by notaries public, and to ensure the uniform and proper administration, implementation, and enforcement of the Colorado Revised Uniform Law on Notarial Acts (RULONA).[1] Specifically, the changes include:

- New Rule 2.4 requires a notary public to both (1) inform a customer, before performing a notarial act, of any service that is an additional charge to the notarial act and (2) provide an itemized invoice of each specific charge. If a notary public fails to itemize these specific charges, the amount charged is presumed to solely cover the notarial act. If that amount charged exceeds the statutory fee limit in section 24-21-529, C.R.S., the invoice is presumptive evidence of a violation of the RULONA.

Other changes to rules not specifically listed are non-substantive and necessary for consistency with Department rulemaking format and style. Cross-references in rules are also corrected or updated.

II. Rulemaking Authority

The statutory authority is as follows:

- Section 24-21-527(1), C.R.S., (2023), which authorizes the Secretary of State to "adopt rules to implement this part 5 [the Revised Uniform Law on Notarial Acts] in accordance with article 4 of this title 24 [the State Administrative Procedure Act]."

- Section 24-21-527(1)(a), C.R.S., (2023), which authorizes the Secretary of State to "[p]rescribe the manner of performing notarial acts regarding tangible and electronic records[.]"

- Section 24-21-527(1)(d), C.R.S., (2023), which authorizes the Secretary of State to "[p]rescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public

[1] Article 21, Title 24 of the Colorado Revised Statutes.

commission and assuring the trustworthiness of an individual holding a commission as notary public…"

- Section 24-21-527(1)(e), C.R.S., (2023), which authorizes the Secretary of State to "[i]nclude provisions [in rules] to prevent fraud or mistake in the performance of notarial acts[.]"

Preliminary Draft of Proposed Rules

Colorado Department of State
Notary Program Rules
8 CCR 1505-11

November 15, 2023

Disclaimer:
In accordance with the State Administrative Procedure Act, this draft is filed with the Colorado Department of State and submitted to the Department of Regulatory Agencies.[1]

This is a preliminary draft of the proposed rules that may be revised before the **December 19, 2023,** rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **December 14, 2023.**[2]

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
~~Strikethrough~~	Deletions
[Italic blue font text]	Annotations

Current 8 CCR 1505-11 is amended as follows:

New Rule 2.4 requires a notary public to inform their customer, prior to performing a notarial act, of any service that is an additional charge to the notarial act and to provide an itemized invoice of each specific charge and informs of the consequences of failing to abide by the new requirements:

2.4 ITEMIZATION OF CHARGES

2.4.1 IF A NOTARY PUBLIC CHARGES FOR ANY SERVICE IN ADDITION TO THE NOTARIAL ACT, THE NOTARY PUBLIC MUST:

(A) INFORM THE CUSTOMER OF THE CHARGES BEFORE PERFORMING THE NOTARIAL ACT; AND

(B) PROVIDE AN ITEMIZED INVOICE THAT LISTS EACH SPECIFIC CHARGE.

2.4.2 IF A NOTARY PUBLIC FAILS TO ITEMIZE SPECIFIC CHARGES, THE AMOUNT CHARGED IS PRESUMED TO SOLELY COVER THE NOTARIAL ACT. IF THAT AMOUNT EXCEEDS THE STATUTORY FEE LIMIT IN SECTION 24-21-529, C.R.S., THE INVOICE IS PRESUMPTIVE EVIDENCE OF A VIOLATION OF THE REVISED UNIFORM LAW ON NOTARIAL ACTS.

[1] Sections 24-4-103(2.5) and (3)(a), C.R.S. (2023). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.
[2] Section 24-4-103(4)(a), C.R.S. (2023). "[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing…shall be made available to any person at least five days prior to said hearing."

Notice of Proposed Rulemaking

Tracking number

2023-00749

Department

1507 - Department of Public Safety

Agency

1507 - Division of Fire Prevention and Control

CCR number

8 CCR 1507-12

Rule title

PERSONS DEALING WITH FIREWORKS

Rulemaking Hearing

Date

12/19/2023

Time

09:30 AM

Location

Virtual Google Meet meet.google.com/cif-tbnj-hzt

Subjects and issues involved

The purpose of this rule change is twofold. First, the rule change clarifies the regulatory definitions governing the Certified Fireworks Display Operator and Certified Pyrotechnic Operator certifications, and clarifies the application processes for those certifications. The rule change specifies that all applicants must submit to a criminal background check and provide proof of relevant training within five years. It also requires all applicants to take and pass the applicable general knowledge exam, eliminating a waiver exception for holders of certifications from approved national fireworks organizations. Finally, it eliminates the three-retake limit on the general knowledge exams.

Secondly, this rule change cleans-up unused definitions and outdated provisions. Specifically, the rule change eliminates a redundant and potentially confusing definition of Operator. It also fixes grammatical and formatting inconsistencies in the rule.

Statutory authority

24-33.5-2004 (7), C.R.S.

Contact information

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DEPARTMENT OF PUBLIC SAFETY

Division of Fire Prevention and Control

8 CCR 1507- 12

PERSONS DEALING WITH FIREWORKS

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to Section ~~24-33.5-2004, C.R.S~~., the Executive Director of the Colorado Department of Public Safety shall promulgate rules and regulations concerning the sale, transportation, storage, and use of fireworks. This rule is proposed pursuant to this authority and is intended to be consistent with the requirements of the State Administrative Procedure Act, Section 24-4-101, et seq., C.R.S.

The purpose of this rule change is twofold. First, the rule change ~~is intended to address a deficiency identified in Section 4.9 of 8 CCR 1507-12~~clarifies the regulatory definitions governing the "Certified Fireworks Display Operator" and "Certified Pyrotechnic Operator" certifications, and ~~clarifies~~ the application processes for those certifications. The rule change ~~requiresclarifies~~specifies that all applicants ~~to~~ must submit to a criminal background check and provide proof of relevant training within five years. It also requires all applicants to take and pass the applicable general knowledge exam, eliminating a waiver exception for holders of certifications from approved national fireworks organizations. Finally, it eliminates the three-retake limit on the general knowledge exams.~~Section 4.9 incorporates by reference the procedure for suspension, denial, or revocation of a license from the State Administrative Procedures Act. A change to the rule is required in order to ensure that Section 4.9 fully complies with the statutory requirements for the procedures for the suspension, denial, or revocation of a license, codified at C.R.S. 24-4-104 (6). Specifically, this rule change removes the language used previously and replaces it with a general reference to the State Administrative Procedure Act.~~

Secondly, this rule change ~~intends to remove direct references to adopted Codes and Standards under Section 2.4 and replace it with a reference to 8 CCR 1507-1 (BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO), which is a consolidation of all Codes and Standards referenced in the rules promulgated for the programs administered by the Department of Public Safety, Division of Fire Prevention & Control~~cleans-up unused definitions and outdated provisions. Specifically, the rule change eliminates a redundant and potentially confusing definition of "Operator". It also fixes grammatical and formatting inconsistencies in the rule.

It was declared by the General Assembly that the establishment of minimum requirements and standards for licenses to sell, store, or use fireworks pursuant to Section 12-28-101, et seq., C.R.S. is necessary for the immediate preservation of the public peace, health and safety of Colorado citizens. The absence of accurate 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

Date of Adoption

DEPARTMENT OF PUBLIC SAFETY

Division of Fire Prevention and Control

PERSONS DEALING WITH FIREWORKS

8 CCR 1507-12

CHAPTER I SCOPE AND DEFINITIONS

1.0 PURPOSE

This regulation is promulgated to establish minimum requirements and standards for licenses to sell, store, or use fireworks in the interest of the life, health and safety of employees and the general public, as well as the protection of property.

1.1 AUTHORITY

The Executive Director of the Department of Public Safety is authorized to promulgate rules and regulations for the licensing of persons dealing with fireworks pursuant to C.R.S. 24-33.5-2004(7). Within the Department of Public Safety, the Director of the Division of Fire Prevention and Control shall administer these rules and regulations.

1.2 SCOPE

These rules and regulations shall apply to the possession, sale, storage, and use of fireworks in the State of Colorado by any person.

For a thorough understanding of all requirements concerning the possession, sale, storage, and use of fireworks in Colorado, these rules must be used in conjunction with Article 33.5 of Title 24, Colorado Revised Statutes.

These rules do not supersede, and are to be used in conjunction with any other state and federal laws and regulations concerning the manufacture, sale, storage, transportation and use of fireworks.

These rules and regulations shall not apply to:

(a) The use of fireworks by railroads or other transportation agencies for signal purposes or illumination.

(b) The sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations.

(c) Fireworks which are used in testing or research by a licensed explosives laboratory.

(d) The sale, purchase, possession, or use of fireworks distributed by the Division of Wildlife for agricultural purposes under conditions approved by said Division.

(e) Toy caps which do not contain more than sixteen milligrams of pyrotechnic composition per cap.

(f) Highway flares, railroad fusees, ship distress signals, smoke candles, and other emergency signal devices.

(g) Educational rockets and toy propellant device type engines used in such rockets when such rockets are of nonmetallic construction and utilize replaceable engines or model cartridges containing less than two ounces of propellant and when such engines or model cartridges are designed to be ignited by electrical means.

(h) The transportation of fireworks when such transportation is under the jurisdiction of the U.S. Department of Transportation.

(i) The manufacture, transportation, and storage of fireworks by federal and state military agencies.

1.3 DEFINITIONS

The definitions contained in C.R.S. 24-33.5-2001 shall apply to these rules and regulations. In addition, the following words, when used in these rules and regulations, shall mean:

APPROVAL, APPROVED or AUTHORIZED: Acceptable to the Director of the Division or the "authority having jurisdiction."

AUTHORITY HAVING JURISDICTION: The organization, office or individual responsible for "approving" equipment, an installation or a procedure.

CERTIFIED FIREWORKS DISPLAY OPERATOR: A person certified by the Division to conduct professional outdoor fireworks displays.

CERTIFIED PYROTECHNIC OPERATOR: A person certified by the Division to conduct pyrotechnic special effect performances before a proximate audience.

C.F.R.: Code of Federal Regulations.

C.R.S.: Colorado Revised Statutes.

DEPARTMENT: The Colorado Department of Public Safety.

DIRECTOR: The Director of the Division of Fire Prevention and Control located within the Colorado Department of Public Safety.

DISCHARGE SITE: The area immediately surrounding the display fireworks mortars used for an outdoor fireworks display.

DISPLAY FIREWORKS: Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than one hundred thirty milligrams of explosive material, aerial shells containing more than forty grams of pyrotechnic composition, and other display pieces which exceed the limits of explosive materials for U.S.D.O.T. classification as "consumer fireworks." Display fireworks are classified as Class B explosives by the U.S.D.O.T.

DIVISION: The Division of Fire Prevention and Control in the Colorado Department of Public Safety.

EXECUTIVE DIRECTOR: The Executive Director of the Colorado Department of Public Safety.

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, black powder, pellet powder, igniting explosives, detonators, squibs, detonating cord, igniter cord, and igniters.

FALLOUT AREA: The area over which aerial shells are fired. The shells burst over this area, and unsafe debris and malfunctioning aerial shells fall into this area. The fallout area is the location where a typical aerial shell dud will fall to the ground considering wind and the angle of mortar placement.

FIREWORKS DISPLAY: An outdoor display of aerial shells and/or ground pieces conducted by a certified fireworks display operator and performed as entertainment, or a special effect performance utilizing pyrotechnic materials and devices before a live audience.

FIREWORKS PLANT: All land and buildings thereon used for in connection with the manufacture, research or processing of fireworks, including storage buildings used with or in connection with plant operation.

GROUND DISPLAY PIECE: A pyrotechnic device that functions on the ground (as opposed to an aerial shell that functions in the air). Typical ground display pieces include fountains, roman candles and wheels.

HIGHWAY: Any public street, public alley or public road.

INSPECTOR: An Inspector of the Division.

LOCAL AUTHORITY: The duly authorized fire department, police department, or sheriff's department of a local jurisdiction.

MAGAZINE: Any building or structure, or container, other than a fireworks plant, approved and used exclusively for the storage of explosive materials.

MONITOR: A person designated by the sponsors of a fireworks display to keep the audience in the intended viewing area and out of the discharge site and fallout area.

MORTAR: A tube from which aerial shells are fired into the air.

MOTOR VEHICLE: Any self-propelled vehicle, truck, tractor, semi-trailer, or truck-trailer combination used for the transportation of freight over public highways.

NFPA: National Fire Protection Association.

~~OPERATOR: The person with overall responsibility for safety and the setting up and discharge of a fireworks display.~~

PERMISSIBLE FIREWORKS: Those small firework devices designed primarily to produce visible effects by combustion and which are listed in, and comply with the construction, chemical composition, and labeling requirements of C.R.S. 24-33.5-2001. Some small devices designed to produce audible effects are included, such as whistling devices. Permissible fireworks burn without explosion, and do not produce a loud report, and no device or component shall, upon functioning, project or disburse any metal, glass, or brittle plastic fragments.

PYROTECHNIC COMPOSITION: A chemical mixture, which upon burning and without explosion, produces visible, brilliant displays, bright lights, or sounds.

PYROTECHNIC DISPLAY OPERATOR: The person with overall responsibility for safety and the setting up and discharge of a fireworks display.

PYROTECHNIC SPECIAL EFFECTS OPERATOR: The person with responsibility for pyrotechnic and special effects safety and who controls, initiates, or otherwise creates special effects. The pyrotechnic operator is also responsible for storing, setting up, and removing pyrotechnic materials after a performance.

PYROTECHNIC SPECIAL EFFECT PERFORMANCES: A special effect created through the use of pyrotechnic materials and devices performed by a Certified Pyrotechnic Operator for the entertainment of a live audience.

SHALL: Indicates a mandatory requirement.

SHOULD: Indicates a recommendation or that which is advised but not required.

STORAGE BUILDING: Any building, structure, or facility in which Common Fireworks (Class C Explosives) in any state of processing, providing there is no exposed pyrotechnic material, but in which no processing, manufacturing or sale is actually performed.

U.S.D.O.T.: United States Department of Transportation.

CHAPTER II GENERAL PROVISIONS

2.1 GENERAL PROVISIONS

Except as provided in C.R.S. 24-33.5-2001 through 24-33.5-2011 and these rules and regulations, no person shall possess or discharge any fireworks, other than permissible fireworks, anywhere in Colorado.

Except as provided in C.R.S. 24-33.5-2001 through 24-33.5-2011 and these rules and regulations, no person shall offer for sale, expose for sale, sell, deliver, consign, or have in his possession with the intent to offer for sale, any fireworks including permissible fireworks, unless said person is licensed to conduct such activity by the Division, and has obtained a permit, if any, required by the local authority.

2.2 SALE OF FIREWORKS TO JUVENILES

Except as provided in paragraph 2.3, no person shall furnish, by gift, sale or other means, any fireworks, including permissible fireworks, to any person who is under sixteen years of age.

2.3 PURCHASE, POSSESSION OR DISCHARGE OF FIREWORKS BY JUVENILES

No person under sixteen years of age may purchase any fireworks, including permissible fireworks.

No person under sixteen years of age may possess or discharge any permissible fireworks unless such person is under adult supervision during these acts. Adult supervision shall mean that a responsible adult is in the immediate vicinity of the juvenile, in order to oversee the activities of the juvenile and to remedy any unsafe acts.

2.4 CODES AND STANDARDS

The following codes and the standards referenced therein are adopted and promulgated as minimum standards for persons dealing with fireworks in accordance with C.R.S. 24-4-103 (12.5):

2.4.1 Adopted codes pertinent to this rule shall be as prescribed in 8 CCR 1507-1 (BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO).

2.4.1.1 For the purposes of this rule the Division shall enforce the Building Codes as defined in 8 CCR 1507-1 § 3.2.1.

2.4.1.2 For the purposes of this rule the Division shall enforce the Fire Codes as defined in 8 CCR 1507-1 § 3.2.2.

2.4.1.3 For the purposes of this rule the Division shall enforce the Codes and Standards for persons dealing with fireworks as defined in 8 CCR 1507-1 § 3.2.5.

2.5 REGULATION BY MUNICIPALITIES AND COUNTIES

These Rules shall not be construed to prohibit the imposition by municipal or county ordinance of further regulations and prohibitions upon the sale, use, and possession of fireworks, including permissible fireworks, within the corporate limits of any city, town, or all or any part of the unincorporated areas of a county, but no such city, town, or county shall permit or authorize the sale, use, or possession of any fireworks in violation of C.R.S. 24-33.5-2001 through 24-33.5-2011 and these Rules.

CHAPTER III PERMISSIBLE FIREWORKS

3.1 GENERAL

Unless otherwise restricted by the ordinances or resolutions of any municipality or other governing body authorized by law to restrict the sale, possession or use of fireworks, the following fireworks may be sold to, possessed by, and/or used by the general public, when such sale, possession and/or use is in accordance with C.R.S. 24-33.5-2001 through 24-33.5-2011 and these rules and regulations:

(a) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each for a single tube or, when more than one tube is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams.

(b) Cone fountains, total pyrotechnic composition not to exceed fifty grams each for a single cone or, when more than one cone is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams.

(c) Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred grams for each complete wheel.

(d) Ground spinner, a small device containing not more than twenty grams of pyrotechnic composition venting out of an orifice usually in the side of the tube. Ground spinners operate similar to a wheel, but are intended to be placed flat on the ground.

(e) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed two hundred grams each in weight.

(f) Dipped sticks and sparklers, the total pyrotechnic composition of which does not exceed one hundred grams, of which the composition of any chlorate or perchlorate shall not exceed five grams.

(g) Any of the following that do not contain more than fifty milligrams of explosive composition:
(1) Explosive auto alarms;
(2) Toy propellant devices;
(3) Cigarette loads; ~~or~~
(4) Strike-on-box matches; or
(5) 4Other trick noise makers.

(h) Snake or glow worm, pressed pellets of not more than two grams of pyrotechnic composition and packaged in retail packages of not more than twenty-five units.

(i) Fireworks which are used exclusively for testing or research by a licensed explosives laboratory.

(j) Multiple tube devices with:
(1) Each tube individually attached to a wood or plastic base;
(2) The tubes separated from each other on the base by a distance of at least one-half of one inch;
(3) The effect limited to a shower of sparks to a height of no more than fifteen feet above the ground;
(4) Only one external fuse that causes all of the tubes to function in sequence; and
(5) A total pyrotechnic composition of no more than five hundred grams.

3.2 LICENSE REQUIRED

No person shall sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks for retail, unless said person is licensed as a fireworks retailer.

CHAPTER IV FIREWORKS LICENSING

4.1 GENERAL PROVISIONS

No person shall purchase, possess, keep, sell or offer for sale, give away, use, or dispose of in any manner any fireworks, except permissible fireworks, unless said person holds a valid license from the Department of Public Safety.

No person shall sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks for retail, unless said person is licensed as a fireworks retailer.

Application for a fireworks license shall be made to the Division in a format prescribed by the Director and shall contain such information as the Director may require.

Application for a fireworks license shall be filed with the Division at least thirty days before the start of activities for which the license is required.

Payment of the fee must accompany the application for a license to the Division.

Licenses issued under these rules and regulations shall be dated and numbered. Each license will indicate the class of license and will be valid through September 1 of the year following the date on which the license was issued. Exception: a retailer of fireworks license shall be valid only for the calendar year in which it is issued.

Where application for a fireworks license is made in the name of a corporation or company, the application shall also include the name of the person who will be responsible for compliance with the provisions of Article 33.5 of Title 24, C.R.S., and any rules promulgated thereunder.

Where application for a fireworks license is made in the name of a corporation or company, a copy of the Certificate of Good Standing from the Secretary of State must be filed with the application.

Where business is to be conducted under a fictitious name, a copy of the trade name affidavit as filed with the Colorado Department of Revenue must be filed with the application.

All applicants for a fireworks license will be subject to a background investigation, including, but not limited to: criminal history, reference checks and review of fireworks records. The application may be denied at the discretion of the Director if the applicant has one or more criminal convictions.

In the event that an application for a fireworks license is incomplete, the applicant shall have 180 days in which to submit additional required documentation, after which the initial application shall be void. Processing fees in accordance with 14.1 shall be forfeited.

4.2 CLASSES OF FIREWORKS LICENSES

Following are the classes of fireworks licenses required by C.R.S. 24-33.5-2004 and these Rules, and the general activities permitted by such license:

(a) RETAILER OF FIREWORKS LICENSE: To sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks at retail.

(b) DISPLAY RETAILER OF FIREWORKS LICENSE: To sell deliver, consign, give or furnish fireworks to any person authorized to conduct a fireworks display in Colorado.

(c) WHOLESALER OF FIREWORKS LICENSE: To sell, deliver, consign, give or furnish permissible fireworks to a retailer for resale in Colorado.

(d) EXPORTER OF FIREWORKS LICENSE: To sell, deliver, consign, give or furnish fireworks for export outside of Colorado.

4.3 LICENSE RESTRICTIONS

No license holder shall sell, deliver, consign, give, or furnish fireworks except in compliance with C.R.S. 24-33.5-2001 through 24-33.5-2011 and these Rules.

No person shall have any fireworks, except permissible fireworks, in his possession or control without a license required by C.R.S. 24-33.5-2004 and these Rules.

4.4 PROTECTION AND EXHIBITION OF LICENSES

License holders shall take every reasonable precaution to protect their licenses from loss, theft, defacement, destruction or unauthorized duplication.

The loss or theft of any license shall be reported immediately to the Division.
Licenses shall be prominently displayed at the location where fireworks are sold.

4.5 REPORTS OF ACCIDENTS, FIRES AND INJURIES

Any accident, fire or injury which occurs in connection with the manufacture, sale, transportation, storage, or use of fireworks, and known to the license holder, shall be reported immediately by the license holder to the Division, and local fire and law enforcement authorities whenever there is loss of life, injury to any person, or damage to property.

4.6 RECORDS OF TRANSACTIONS - GENERAL REQUIREMENTS

Unless otherwise required by C.R.S 24-33.5-2001 through 24-33.5-2011 and these Rules, all license holders shall keep a complete record of all transactions involving fireworks for two years following the year in which the transactions occurred. An accumulation of invoices, sales slips, delivery tickets, bills of lading, or receipts or similar papers representing individual transactions will satisfy the general requirements of complete records. The specific record- keeping requirement for each class of license is found herein under the heading for the class of license.

Such records must be retained by the license holder and furnished to the Division during normal business hours upon request.

4.7 LICENSE CHANGES

The Division shall be notified within twenty-four hours when:

(a) The permanent address of a person who possesses a fireworks license is changed.

(b) The ownership of any business possessing fireworks licenses is changed.

(c) The person who is responsible for compliance with the provisions of Article 33.5 of Title 24, C.R.S. is changed.

(d) The location of a retail sales outlet is changed and the address of the new location.

Failure of the license holder to provide such information shall result in the license being void.

4.8 DENIAL, SUSPENSION OR REVOCATION OF A LICENSE

A license for the sale or use of fireworks may be denied, suspended, or revoked by the Executive Director because of:

(a) Violations of any of the provisions of Article 33.5 of Title 24, C.R.S., and any rules promulgated thereunder;

(b) A conviction of any felony, but subject to the provisions of C.R.S. 24-5-101;

(c) A conviction pursuant to C.R.S. 24-33.5-2010;

(d) Any material misstatement, misrepresentation, or fraud in obtaining a fireworks license.

4.9 PROCEDURE ON DENIAL, SUSPENSION OR REVOCATION

4.9.1 If the Executive Director finds that grounds exist for the denial, revocation, or suspension of license of any applicant, action shall be taken according to the provisions of the Colorado Administrative Procedure Act, Section 24-4-101, et seq., C.R.S.

4.9.2 Upon the denial, revocation, or suspension of any of any license, the former license holder shall immediately surrender to the Executive Director of the Department of Public Safety the license and all copies thereof.

CHAPTER V RETAILER OF FIREWORKS LICENSE

5.1 GENERAL

No person shall sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks for retail until that person first obtains a retailer of fireworks license from the Division and the permit, if any, required by the authority having jurisdiction.

No person shall sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks which have not been purchased by a wholesaler licensed by the State of Colorado.

A retailer of fireworks license will permit only such sales as provided by Title 24, Article 33.5, C.R.S.

5.2 ACTIVITIES PERMITTED

The only activity permitted under this license is the sale, or possession with intent to sell permissible fireworks for retail to the public.

Prior to the start of permitted activities, the license holder must obtain a permit, if any required, from the authority having jurisdiction.

5.3 LICENSE PROVISIONS

Application for a retailer of fireworks license shall be made to the Division at least thirty days prior to the start of permitted activities.

A retailer of fireworks license shall be good only for the calendar year in which it is issued and shall apply to only one retail location.

The license shall be prominently displayed at the place of business of the licensed retailer.

5.4 VERIFICATION REQUIRED FOR SALES

For all sales, the retailer must verify that the purchaser is over sixteen years of age by way of inspecting the purchaser's driver's license or other state or federally-issued identification card.

5.5 RECORD OF TRANSACTIONS

A retailer of fireworks shall keep available for inspection a copy of each invoice for fireworks purchased. Such invoice shall show the license number of the wholesaler from whom such fireworks were purchased. Said records shall be maintained for as long as any fireworks included on the invoice ~~am~~ are held in such person's possession.

CHAPTER VI DISPLAY RETAILER OF FIREWORKS LICENSE

6.1 GENERAL

No person shall sell, deliver, consign, give, or furnish fireworks to any person authorized by C.R.S. 24-33.5-2003 and these rules and regulations to conduct a fireworks display in Colorado until that person first obtains a display retailer of fireworks license from the Division and the permit, if any, required by the authority having jurisdiction.

A display retailer of fireworks license will permit only such sales as provided by Title 24, Article 33.5, C.R.S.

6.2 ACTIVITIES PERMITTED

The only activity permitted under this license is the sale of display fireworks and fireworks displays to sponsors of fireworks displays or certified fireworks display operators who are holders of permits for fireworks displays.

Prior to the start of permitted activities, the license holder must obtain a permit, if any required, from the authority having jurisdiction.

6.3 LICENSE PROVISIONS

Application for a display retailer of fireworks license shall be made to the Division at least thirty days prior to the start of permitted activities.

A display retailer of fireworks license shall be valid through September 1 of the year following the date on which the license was issued.

The license shall be prominently displayed at the place of business of the licensed display retailer.

6.4 VERIFICATION REQUIRED FOR SALES

For all sales, the display retailer must verify that the display will be conducted by a certified fireworks display operator and that the sponsor holds a current and valid permit for a fireworks display.

CHAPTER VII WHOLESALER OF FIREWORKS LICENSE

7.1 GENERAL

No person shall sell, deliver, consign, give, or furnish permissible fireworks to a retailer for resale in Colorado until that person first obtains a wholesaler of fireworks license from the Division and the permit, if any, required by the authority having jurisdiction.

A wholesaler of fireworks license will permit only such sales as provided by Title 24, Article 33.5, C.R.S.

7.2 ACTIVITIES PERMITTED

The only activity permitted under this license is the sale, delivery, consignment, gift or otherwise providing permissible fireworks to a retailer for resale in Colorado.

Prior to the start of permitted activities, the license holder must obtain a permit, if any required, from the authority having jurisdiction.

7.3 LICENSE PROVISIONS

Application for a wholesaler of fireworks license shall be made to the Division at least thirty days prior to the start of permitted activities.

A wholesaler of fireworks license shall be valid through September 1 of the year following the date on which the license was issued.

The license shall be prominently displayed at the place of business of the licensed wholesaler.

7.4 VERIFICATION REQUIRED FOR SALES

For all sales, the wholesaler must verify that the purchaser is a holder of a valid retailer, display retailer, or exporter of fireworks.

CHAPTER VIII EXPORTER OF FIREWORKS LICENSE

8.1 GENERAL

No person shall sell, deliver, consign, give, or furnish fireworks for export outside of Colorado until that person first obtains an exporter of fireworks license from the Division and the permit, if any, required by the authority having jurisdiction.

An exporter of fireworks license will permit only such sales as provided by Title 24, Article 33.5, C.R.S.

8.2 ACTIVITIES PERMITTED

The only activity permitted under this license is the sale, delivery, consignment, gift or otherwise providing fireworks for export outside of Colorado.
Prior to the start of permitted activities, the license holder must obtain a permit, if any required, from the local authority.

8.3 LICENSE PROVISIONS

Application for an exporter of fireworks license shall be made to the Division at least thirty days prior to the start of permitted activities.

An exporter of fireworks license shall be valid through September 1 of the year following the date on which the license was issued and shall apply to only one retail location.

The license shall be prominently displayed at the place of business of the licensed exporter.

8.4 VERIFICATION REQUIRED FOR SALES

For all permitted sales, the exporter must verify that the purchaser:

(a) holds a valid motor vehicle driver's license issued by a state other than Colorado, and holds a valid motor vehicle registration issued by a state other than Colorado; or

(b) holds a valid Colorado motor vehicle driver's license, and holds a valid wholesale, retail or resale license issued by a state or local authority located outside the State of Colorado.

8.5 RECORD OF TRANSACTIONS

An exporter of fireworks shall keep available for inspection a copy of each bill of lading for fireworks sold. Such bill of lading must, at a minimum, show:

(a) The full legal name and address of the purchaser; and

(b) The quantity and type of firework sold.

The sale of fireworks for transport in the purchaser’s vehicle is prohibited unless:

(a) The purchaser provides, and the exporter records, proof of a valid motor vehicle driver’s license issued by a state other than Colorado and proof of ownership of lawfully registered transport vehicle licensed in a state other than Colorado; or

(b) The purchaser provides, and the exporter records, proof of a valid motor vehicle driver’s license issued by the state of Colorado and furnishes a valid wholesale or retail license number or resale license number issued by the governing body of a state or local authority located outside of the state of Colorado.

Said records shall be retained by the license holder for three years following the year in which the transactions occurred.

CHAPTER IX STORAGE OF FIREWORKS

9.1 GENERAL

All storage of fireworks shall be in accordance with the building and fire codes adopted by the governing body. If the governing body has not adopted a fire code, all storage of fireworks shall be in accordance with the Fire Code indicated in paragraph 2.4.3.

CHAPTER X FIREWORKS PERMITS

10.1 GENERAL

Any governing body has the power to grant nontransferable and nonassignable permits within the area under its jurisdiction for the storage of fireworks or for:

(a) the facilities used for the retail sales of fireworks, including permissible fireworks.

(b) displays of fireworks by any person, fair association, amusement park, or other organizations or groups.

10.2 PERMIT REQUIRED

Prior to the start of permitted activities, the holder of any license pursuant to C.R.S. 24-33.5-2004 and these Rules must obtain a permit, if any required, from the governing body.

Application for permits pursuant to C.R.S. 24-33.5-2003 and these Rules shall be made to the governing body at least thirty days prior to the start of permitted activities, unless otherwise required by the authority having jurisdiction.

CHAPTER XI DISPLAY OF FIREWORKS

11.1 GENERAL PROVISIONS

No fireworks display shall be conducted in the State of Colorado without a valid permit if required by the local authority. No permit shall be required for fireworks displays conducted by the Colorado State Fair Authority or any other governing body.

These provisions apply to both outdoor fireworks displays and pyrotechnic special effect performances.

11.2 PERMIT PROVISIONS

All fireworks display permits shall be valid for only one date or event and location and shall expire the day following the permitted date. An alternate date shall be permitted should the display or event covered by the permit be postponed.

The application for a fireworks display permit shall be accompanied by a site plan, evidence of financial responsibility, and a check or money order in payment of any required fee.

No permit for a fireworks display shall be issued to any person unless said person is a certified fireworks display operator or a certified pyrotechnic operator, whichever classification is appropriate.

11.3 CONDUCT OF FIREWORKS DISPLAY

All fireworks displays performed in the State of Colorado must be conducted by a certified fireworks display operator or a certified pyrotechnic operator, whichever classification is appropriate.

In addition to any other requirements of the authority having jurisdiction, any outdoor fireworks display conducted in the State of Colorado must be performed in accordance with the requirements of NFPA 1123-2014; Code for the Outdoor Display of Fireworks.

Any pyrotechnic special effect performances must be performed in accordance with the requirements of the authority having jurisdiction.

Unless otherwise required by the authority having jurisdiction, the display site shall be set-up and ready for inspection a minimum of sixty (60) minutes prior to the start of the display.

Prior to conducting an authorized fireworks display, the operator shall conduct an inspection of the display site.

11.4 REPORTS OF ACCIDENTS, FIRES AND INJURIES

Any pyrotechnics-related accident, fire or injury which occurs in connection with an authorized fireworks display, and known to the operator, shall be reported immediately by the operator to the Division, and local fire and law enforcement authorities.

CHAPTER XII FIREWORKS DISPLAY OPERATOR CERTIFICATION

12.1 GENERAL PROVISIONS

No person shall be certified as a fireworks display operator unless ~~he or she~~they have ~~has~~ passed a general knowledge fireworks examination administered by the Colorado DFPC. ~~, except that any person who holds a valid fireworks display operator certification from an approved national fireworks organization may request a waiver of the required examinatio~~examinationn and ~~.~~

~~Any person who has~~ have actively participated in a minimum of a~~t least~~ five documented fireworks displays in the five (5) years prior to application submission. ~~and has satisfactory references may request a waiver of the required examination.~~

12.2 APPLICATION FOR CERTIFICATION

Application for certification as a fireworks display operator shall be filed with the Division on forms prescribed by the Director and shall contain such information as the Director may require.

Application for certification as a fireworks display operator shall be filed with the Division at least thirty days before the date of any fireworks display to be conducted by the applicant.

Payment of the fee required by these rules and regulations must accompany the application for certification to the Division.

A criminal investigative background check ~~will~~shall be conducted on all applicants. The application may be denied at the discretion of the Director if the applicant has one or more criminal convictions.

All applicants shall submit ~~P~~proof of successful completion of a safety training program specific to fireworks display operators within the five (5) years prior to the application submission.

Certification issued under these rules and regulations shall be dated and numbered and shall be valid for a period of three years unless earlier revoked.

In the event that an application for a fireworks certification is incomplete, the applicant shall have 180 days in which to submit additional required documentation, after which the initial application shall be void. Processing fees in accordance with 14.1 shall be forfeited.

Renewal of the certification shall be granted to an operator without the need to retest, provided: (a) they are in good standing with the Division~~; and~~, (b) they have actively participated ~~in at~~ as a fireworks display operator in the safe performance of at least three fireworks displays during the previous three-year certification period; and, (c) provide proof of completion of a safety training program for fireworks display operators completed within the previous three-year certification period~~.~~

12.3 GENERAL KNOWLEDGE EXAMINATION

A General Knowledge Fireworks Examination designed to indicate that personnel who handle display fireworks in the State of Colorado have a minimum understanding of safety requirements and State regulations, shall be administered to all persons who apply for certification as an operator of fireworks displays. This examination shall be developed or approved by the Director. Length and content of the examination and the passing grade will be at the discretion of the Director.

Any person may retake the examination when a passing grade is not achieved; however, a waiting period of thirty (30) days is required after each unsuccessful attempt.

~~Applicants may receive three successive examination attempts. Should the applicant fail the examination on the third attempt, he will not be allowed to retake the examination until he produces evidence of satisfactory completion of an approved it is recommended that applicantthe applicant should participate in a program of instruction in conducting fireworks displays before retaking the examination.~~

A thirty dollar ($30) nonrefundable fee will be assessed for each attempt to pass the General Knowledge Fireworks Examination.

~~A company or corporation which utilizes a training and testing program to qualify their personnel may petition the Division to use this test in lieu of this General Knowledge Fireworks Examination.~~

CHAPTER XIII PYROTECHNIC OPERATOR CERTIFICATION

13.1 GENERAL PROVISIONS

No person shall be certified as a pyrotechnic operator unless ~~he or she has~~they have passed a general knowledge fireworks examination administered by the Colorado DFPC~~, except that any person who holds a valid pyrotechnic operator certification from an approved national fireworks organization may request a waiver of the required examination.~~, and hasve actively participated in a minimum of ~~a~~ five documented fireworks pyrotechnic shows in the five (5) years prior to application submission.

~~Any person who has actively participated in at least five performances where pyrotechnic materials were used may request a waiver of the required examination.~~

13.2 APPLICATION FOR CERTIFICATION

Application for certification as a pyrotechnic operator shall be filed with the Division on forms prescribed by the Director and shall contain such information as the Director may require.

Application for certification as a pyrotechnic operator shall be filed with the Division at least thirty days before the date of any fireworks display to be conducted by the applicant.

Payment of the fee required by these rules and regulations must accompany the application for certification to the Division.

A criminal investigative background check ~~will~~shall be conducted on all applicants. The application may be denied at the discretion of the Director if the applicant has one or more criminal convictions.

All applicants shall submit Pproof of successful completion of a safety training program specific to fireworks pyrotechnic operators within the five (5) years prior to the application submission.

Certification issued under these rules and regulations shall be dated and numbered and shall be valid for a period of three years unless earlier revoked.

In the event that an application for a fireworks certification is incomplete, the applicant shall have 180 days in which to submit additional required documentation, after which the initial application shall be void. Processing fees in accordance with 14.1 shall be forfeited.

Renewal of the certification shall be granted to an operator without the need to retest, provided: (a) they are in good standing with the Division~~; and~~, (b) they have actively participated as a fireworks pyrotechnic operator in the safe performance of ~~in~~ at least three pyrotechnic ~~displays~~ shows during the previous three-year certification period ; and, (c) provide proof of completion of a safety training program for fireworks pyrotechnic operators completed within the previous three-year certification period.

13.3 GENERAL KNOWLEDGE EXAMINATION

A General Knowledge Fireworks Examination designed to indicate that personnel who handle ~~display~~ pyrotechnic fireworks in the State of Colorado have a minimum understanding of safety requirements and State regulations, shall be administered to all persons who apply for certification as an operator of pyrotechnic displays. This examination shall be developed or approved by the Director. Length and content of the examination and the passing grade will be at the discretion of the Director.

Any person may retake the examination when a passing grade is not achieved; however, a waiting period of thirty (30) days is required after each unsuccessful attempt.

~~Applicants may receive three successive examination attempts. Should the applicant fail the examination on the third attempt, it is recommended that applicantthe applicant should participate in a, he will not be allowed to retake the examination until he produces evidence of satisfactory completion of an approved program of instruction in conducting fireworks pyrotechnic showsdisplays before retaking the examination.~~

~~A company or corporation which utilizes a training and testing program to qualify their personnel may petition the Division to use this test in lieu of this General Knowledge Fireworks Examination.~~

CHAPTER XIV LICENSE, CERTIFICATION AND PERMIT FEES

14.1 GENERAL

The Department of Public Safety will charge the following fees for tests, licenses, certifications and permits issued under these rules and regulations:

GENERAL KNOWLEDGE FIREWORKS EXAMINATION.....$30.00

RETAILER OF FIREWORKS LICENSE.....$50.00

DISPLAY RETAILER OF FIREWORKS LICENSE.....$1,500.00

WHOLESALER OF FIREWORKS LICENSE.....$1,500.00

EXPORTER OF FIREWORKS LICENSE.....$1,500.00

FIREWORKS DISPLAY OPERATOR CERTIFICATION.....$50.00

PYROTECHNIC OPERATOR CERTIFICATION.....$50.00

The above fees are established for licenses, certification and permits issued by the Department of Public Safety. Consult the local authority to determine their fees for permits, if any, pursuant to C.R.S. 24-33.5-2003.

Of the above fees, the sum of $50.00 represents the cost to process applications for licensing or certification. In the event an application for licensing or certification is denied, for any reason, this amount is non-refundable. Processing fees will not be refunded in the event that local or statewide fireworks restrictions are enacted. In addition, the above listed fees are non-refundable in the event a license is suspended or revoked.

Fees may be waived or modified when appropriate at the discretion of the Director or his designee. Request for waiver or modification shall be in writing.

Notice of Proposed Rulemaking

Tracking number

2023-00756

Department

1507 - Department of Public Safety

Agency

1507 - Division of Homeland Security and Emergency Management

CCR number

8 CCR 1507-46

Rule title

LAW ENFORCEMENT PUBLIC SAFETY AND CRIMINAL JUSTICE INFORMATION SHARING GRANT PROGRAM

Rulemaking Hearing

Date

12/15/2023

Time

10:00 AM

Location

Virtual Google Meet meet.google.com/guc-mjrn-dfw

Subjects and issues involved

The Agency is proposing to repeal this rule. Effective July 2, 2023, section 24-33.5-1617, C.R.S. was repealed, removing the statutory authority and funding for the Grant Program. These rules are no longer necessary and their continuance would cause confusion to stakeholders, grant applicants, and the general public. For these reasons, it is necessary to repeal these adopted rules.

Statutory authority

24-33.5-1617, C.R.S.

Contact information

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Title

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DEPARTMENT OF PUBLIC SAFETY
DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

Law Enforcement Public Safety and Criminal Justice Information Sharing Grant Program

8 CCR 1507-46

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

The Agency is proposing to repeal this rule. Effective July 2, 2023, section 24-33.5-1617, C.R.S. was repealed, removing the statutory authority and funding for the Grant Program. These rules are no longer necessary and their continuance would cause confusion to stakeholders, grant applicants, and the general public. For these reasons, it is necessary to repeal these adopted rules.

~~House Bill 19-1073 created the Law Enforcement, Public Safety, and Criminal Justice Information Sharing Grant Program ("Grant Program") and authorized the Director of the Division of Homeland Security and Emergency Management to promulgate rules as necessary to implement the Grant Program. 24-33.5-1617(2)(d), C.R.S.~~

~~These rules are therefore promulgated for the purpose of implementing the Grant Program. As required by section 24-33.5-1617(2)(d), C.R.S., these rules include the time frames for applying for grants, the form of the grant program application, the criteria for evaluating the financial need of grant applicants, the time frames for distributing grant money, and requirements for reports from grant recipients. These revised rules amend the period of availability of the grant funds to reach a wider law enforcement audience.~~

~~Kevin Klein~~ ~~Date of Adoption~~
~~Director, Division of Homeland Security and Emergency Management~~

Colorado Department of Public Safety
Division of Homeland Security and Emergency Management
8 CCR 1507-46
Law Enforcement Public Safety and Criminal Justice Information Sharing Grant Program

1. Authority

These rules are adopted pursuant to the authority in section 24-33.5-1617, 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 Law Enforcement, Public Safety, and Criminal Justice Information Sharing Grant Program (the Grant Program), including the time frames for applying for grants, the form of the Grant Program application, the criteria for evaluating the financial need of grant applicants, the time frames for distributing grant money, and requirements for reports from grant recipients.

3. Applicability

The provisions of this section shall be applicable to all eligible applicants and recipients of Law Enforcement, Public Safety, and Criminal Justice Information Sharing Grant Program funds as provided by law.

4. Definitions

"Award" means financial assistance that provides support to accomplish a public purpose given by the state to an eligible recipient.

"CISC" means the Colorado Information Sharing Consortium created through an intergovernmental agreement effective April 7, 2014, in accordance with section 29-1-203, or its successor organization.

"Grant Program" means the Law Enforcement Public Safety and Criminal Justice Information Sharing Grant Program established by section 24-33.5-1617, C.R.S.

"Local Law Enforcement Agency" means a county sheriff's office, a municipal police department, or a town marshal's office.

"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.

"Recipient" means an eligible applicant receiving an award.

5. Program Requirements

5.1 Eligibility

A. Applicant must be a local law enforcement agency, including county sheriff's offices, municipal police departments, or a town marshal's offices.

B. Applicants must submit a complete application developed by the Colorado Division of Homeland Security and Emergency Management, Office of Grants Management in conformance with the application form and instructions and the terms of the Grant Program guidance described below.

C. The Grant Program funds may only be used for the following purposes:

1. The costs associated with connecting to CISC's Information-sharing systems that are necessary to allow the recipient to share law enforcement data and intelligence information through CISC including:

a. Computer hardware
b. Computer software
c. Computer programming

D. Grant recipients will enter into contract agreements with the Division. The contract agreement between the State and the recipient(s) will specify additional requirements, including, but not limited to: performance measures, reporting requirements, and monitoring of recipient's activities and expenditures.

E. In awarding the grants, the Division will consider the following criteria:

1. The financial need of the applicant. Applicants financial need will be evaluated based on their responses and data provided in the grant application.

2. The applicant's commitment to share all accessible and relevant law enforcement and intelligence information in the applicant's custody.

3. The applicant's commitment to assume fiscal responsibility for the ongoing annual costs of maintaining data sharing through CISC after the grant money no longer available.

5.2 Award Details

A. Period of Performance: Twelve (12) Months

B. Funding Instrument: Discretionary Grant

5.3 Time Frames for Application

A. Time Frames

Application Submission Deadline: May 1, 2021; 5:00 PM MST
Grant Period of Performance: 12 months from issuance

B. Restrictions

1. Applications that are not submitted by the stated Application Submission Deadline will not be reviewed or considered for funding.

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 Grant 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.

5.6 Rule Expiration

A. This section is repealed, effective July 1, 2022 unless extended.

5.7 Inquiries

A. Questions, clarification, or interpretation of this section should be addressed to the Office of Grant Management in the Division of Homeland Security and Emergency Management, 9195 E Mineral Ave, Suite 234, Centennial, CO 80112, 303-239-4198, Austin.geddis@state.co.us, www.colorado.gov/dhsem.

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxation Division

CCR number

1 CCR 201-4

Rule title

1 CCR 201-4 SALES AND USE TAX 1 - eff 12/15/2023

Effective date

12/15/2023

DEPARTMENT OF REVENUE

Taxation Division

SALES AND USE TAX

1 CCR 201-4

Rule 39-26-102(11). Rooms and Accommodations.

Basis and Purpose. The statutory bases for this rule are sections 39-21-112(1), 39-26-102(11), and 39-26-122, C.R.S. The purpose of this rule is to define the terms "room" and "accommodation" as those terms are used in section 39-26-102(11), C.R.S., and elsewhere in article 26 of title 39, C.R.S. The rule also defines "auto camp."

(1) A "room" is a regular sleeping room or unit which is a part of a hotel, apartment hotel, inn, lodging house, guest house, motor hotel, motel, mobile home, trailer coach, dude ranch or guest ranch, for which a charge is made for its use.

(2) "Accommodation" includes the furnishing of space in any auto camp, or trailer court and park, under any concession, permit, right to access, license to use, or any other agreement by or through which any such space may be used or occupied.

(3)

(a) An "auto camp" is a temporary, overnight lodging accommodation that specifically caters to persons traveling by motor vehicle, and that offers one or more of the following amenities:

(i) vehicle electricity supply;

(ii) vehicle water supply;

(iii) a vehicle sewage and waste water dump station; or

(iv) a temporary or permanent overnight shelter (such as a tent, yurt, teepee, or other shelter) provided by the owner or operator of the auto camp.

(b) A temporary, overnight lodging accommodation whose only amenity is stations for charging the engine of an electric vehicle is not an "auto camp."

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Office of the Attorney General

Tracking number: 2023-00441

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

Taxation Division

on 11/01/2023

1 CCR 201-4

SALES AND USE TAX

The above-referenced rules were submitted to this office on 11/01/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 13, 2023 14:11:58

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxation Division

CCR number

1 CCR 201-4

Rule title

1 CCR 201-4 SALES AND USE TAX 1 - eff 12/15/2023

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DEPARTMENT OF REVENUE

Taxation Division

SALES AND USE TAX

1 CCR 201-4

Rule 39-26-734–1. Declared Wildfire Disaster Rebuild Exemption Refund Rate.

Basis and Purpose. The statutory bases for this rule are sections 39-21-112(1), 39-26-122, 39-26-734(6)(c), 32-9-119(2), and 32-13-107, C.R.S. The purpose of this rule is to explain how the sales and use tax exemptions allowed by section 39-26-734(3)(a) and related refunds will be calculated with respect to qualified residential structures that are outside the Regional Transportation District, the Scientific and Cultural Facilities District, or both.

Qualified residential structures that are outside the Regional Transportation District established by article 9 of title 32, C.R.S., the Scientific and Cultural Facilities District established by article 13 of title 32, C.R.S., or both, are eligible for the four percent refund rate set forth in section 39-26-734(4)(b), C.R.S.

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1 CCR 201-4

SALES AND USE TAX

The above-referenced rules were submitted to this office on 11/01/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

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Philip J. Weiser
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by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Education

Agency

Division of Public School Capital Construction Assistance

CCR number

1 CCR 303-3

Rule title

1 CCR 303-3 BUILDING EXCELLENT SCHOOLS TODAY GRANT PROGRAM 1 - eff 12/15/2023

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12/15/2023

DEPARTMENT OF EDUCATION

Division of Public School Capital Construction Assistance

BUILDING EXCELLENT SCHOOLS TODAY GRANT PROGRAM

1 CCR 303-3

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

Authority

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

Scope and Purpose

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

1. Definitions

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

1.1.1. A School District;

1.1.2. A District Charter School;

1.1.3. An Institute Charter School;

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

1.1.5. The Colorado School for the Deaf and Blind.

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

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

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

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

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

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

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

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

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

1.11. "Capital Construction" has the same meaning as set forth in § 24-30-1301 (2); C.R.S. except that the term also includes technology, as defined in § 22-43.7-109 (5)(a)(I)(B)

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

1.13. "Charter School" means a Charter School as described in § 22-54-124 (1)(f.6)(I)(A) or (1)(f.6)(I)(B) C.R.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Eligibility

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

2.1.1. A School District;

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

2.1.3. An Institute Charter School;

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

2.1.5. The Colorado School for the Deaf and Blind.

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

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

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

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

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

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

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

3. Assistance Board

3.1. Conflict of Interest

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

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

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

3.1.3. Board members, and their firms, shall not present their position on the Board to School Districts, Charter Schools, Institute Charter Schools, BOCES, or the Colorado School for the Deaf and Blind as an advantage for using their firm over other firms in a bid to provide services on any capital construction project.

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

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

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

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

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

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

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

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

4. Matching Requirement

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

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

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

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

4.1.1.3. The total dollar amount of all school district mills, per capita, relative to the statewide average;

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

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

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

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

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

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

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

4.1.2.3. The average total dollar amount of all school district mills, per capita, of all members of the Board of Cooperative Education Services participating in the Project relative to the statewide average;

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

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

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

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

4.1.3.1. For a district charter school that is occupying a district facility and paying only the direct costs of occupancy for its facility pursuant to § 22-30.5-104 (7)(c) C.R.S., the match percentage of the district charter school's authorizing district;

4.1.3.2. For district charter schools that are not included in subsection 4.1.3.1 of this section, seventy-five percent of the match percentage of the district charter school's authorizing school district; or

4.1.3.3 Fifty percent of the average match percentages for all school districts in the state for an institute charter school;

4.1.3.4. Whether a district charter school's authorizer retains no more than ten percent of it's capacity to issue bonds;

4.1.3.5. In the ten years preceding the year in which the charter school submits the application, the number of times the charter school has sought or been afforded:

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

4.1.3.5.2 Funding, including financing for capital construction, other than state aid pursuant to section § 22-54-124 C.R.S. from any other source;

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

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

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

4.2. Waiver or reduction of Matching Moneys

4.2.1. An Applicant may apply to the Board for a waiver or reduction of the Matching Moneys requirement. Such application shall discuss unique issues demonstrating why the percentage is not representative of the Applicant's current financial state. The Board may grant a waiver or reduction if it determines:

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

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

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

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

evaluating each wavier application using the prescribed wavier application evaluation tool.

4.3. Charter School matching moneys Loan Program.

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

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

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

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

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

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

4.3.7. Charter School Loan Program application

4.3.7.1. An application for a loan shall include:

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

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

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

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

projected operating budget for the next five years. Enrollment figures for the previous three years, the current year and the following three years;

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

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

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

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

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

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

4.3.8. Charter School Loan Program deadline for submission

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

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

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

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

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

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

4.3.9.3. Amortize the loan payments over the same period in years as the Lease-Purchase agreement entered into pursuant to 22-43.7-110 C.R.S. to provide Financial Assistance to the Eligible Charter School for which the loan is approved; except that the Eligible Charter School may pay the full amount of the loan early without incurring a prepayment penalty; and

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

5. Applications

5.1. Deadline for submission

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

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

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

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

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

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

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

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

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

5.2.6. A statement regarding the means by which the Applicant intends to provide Matching Moneys required for the project, including but not limited to voter-approved multiple-fiscal year debt or other financial obligations, utility cost savings associated with any utility costs-savings contract, as defined in § 24-30-2001 (6), gifts, grants, donations, or any other means of financing permitted by law, or the intent of the Applicant to seek a waiver of the Matching Moneys requirement. If an Applicant that is a School District or a Board of Cooperative Educational Services with a participating School District intends to raise Matching Moneys by obtaining voter approval to enter into a sublease-purchase agreement that constitutes an indebtedness of the district as pursuant to § 22-32-127 C.R.S., it shall indicate whether it has received the required voter approval or, if the election has not already been held, the anticipated date of the election;

5.2.7. A description of any efforts by the Applicant to coordinate Capital Construction projects with local governmental entities or community-based or other organizations that provide facilities or services that benefit the community in order to more efficiently or effectively provide such facilities or services, including but not limited to a description of any

financial commitment received from any such entity or organization that will allow better leveraging of any Financial Assistance awarded;

5.2.8. If deemed relevant by the applicant, a statement of the applicant's annualized utility costs, including electricity, natural gas, propane, water, sewer, waste removal, telecommunications, internet, or other monthly billed utility services, and the amount of any reduction in such costs expected to result if the applicant receives financial assistance;

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

5.2.10. If the Application is for Financial Assistance for either the construction of a new Public School Facility that will replace one or more existing Public School Facilities or the reconstruction or expansion of an existing Public School Facility and if the Applicant will stop using an existing Public School Facility for its current use if it receives the Grant, the Applicant will include a plan for the future use or disposition of the existing Public School Facility and the estimated cost of implementing the plan.

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

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

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

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

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

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

5.3. BEST Lease-Purchase Funding

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

5.4. BEST Emergency Grants

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

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

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

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

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

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

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

6. Application Review

6.1. Time for Review

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

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

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

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

6.2. The Board, taking into consideration the Statewide Financial Assistance Priority Assessment, conducted pursuant to § 22-43.7-108 shall prioritize and determine the type and amount of the grant or matching grant for Applications for Projects deemed eligible for Financial Assistance based on the following criteria, in descending order of importance:

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

6.2.2. As used in § 22-43.7-109(5)(a)(1), “technology” means hardware, devices, or equipment necessary for individual student learning and classroom instruction, including access to electronic instructional materials, or necessary for professional use by a classroom teacher.

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

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

6.2.4. Projects that will provide career and technical education capital construction in public school facilities; and

6.2.5 Projects that assist public schools to replace prohibited American Indian mascots as required by Section 22-1-133

6.2.6. All other projects.

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

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

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

6.2.7.3. Overall condition of the Applicant's existing facilities;

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

6.2.7.5. The project life cycle.

6.2.7.6. The Public School Facility's Facility Condition Index (FCI), Colorado Facility Index (CFI), school priority score and construction guidelines score.

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

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

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

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

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

6.3.2.2. If the Board recommends partial funding for a Project and the Applicant declines such funding, the Board will deem the Applicant to have withdrawn its Application.

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

6.4.1. The prioritized list shall include the Board's recommendation to the State Board as to the amount of Financial Assistance to be provided to each Applicant approved by the Board

to receive funding and whether the assistance should be in the form of a BEST Cash Grant, BEST Lease-purchase Funding or a BEST Emergency Grant.

6.4.2. When funding State Board-approved alternate Projects, the Board may offer funding to a Project in its entirety or may offer a partial award, based on available appropriations. If the Board offers partial funding to a Project and the Applicant declines such funding, the Board will deem the Applicant to have withdrawn solely for purposes of allowing the next-highest priority alternate Projects to be funded.

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

7. BEST Lease-purchase Funding

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

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

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

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

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

8. Payment and Oversight

8.1. Payment.

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

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

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

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

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

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

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

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

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

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

8.2. Oversight

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

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

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

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

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

8.2.6. Upon completion of a new school, major renovation or addition Project, the Grantee shall affix a permanent sign that reads: "Funding for this school was provided through the Building Excellent Schools Today Program from local matching dollars, Colorado State Land Board, School Trust Lands, the Colorado Lottery, and excise taxes." with modifications if waived in writing by the Division.

9. Technical Consultation

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

Editor's Notes

History

Entire rule emer. rule eff. 11/19/2008; expired 02/19/2009.

Entire rule eff. 03/30/2009.

Entire rule eff. 12/30/2009.

Entire rule eff. 08/14/2011.

Entire rule eff. 12/30/2012.

Entire rule eff. 05/15/2014.

Rules 3.1.3-3.1.4, 4.3.8.3, 5.4, 8.1.5 eff. 01/30/2015. Rule 6.1.5 repealed eff. 01/30/2015.

Rules 1.13, 1.14, 2.3-2.5, 6.2.1-6.2.4.7, 8.1.3.5, 8.1.5 eff. 11/30/2016.

Rules 1.11, 2.31, 2.32, 3.1.4.4, 4.3.3, 5.2.6, 5.2.8-5.2.15, 5.4.2, 6.2 eff. 12/30/2017.

Rules 5.2.10-5.2.16, 8.2.6 eff. 01/30/2019.

Rules 6.24-6.26 eff. 01/01/2020.

Rules 6.25-6.2.7.7 eff. 04/30/2022.

Rules 6.3.1-6.3.2.2, 6.4-6.4.2 eff. 01/14/2023. Rules 8.1.5-8.1.5.3 repealed eff. 01/14/2023.

Rules 4.1.1.3, 4.1.1.6-4.1.1.8, 4.1.2.3, 4.1.2.7, 4.1.3.1-4.1.3.9. Rules 4.1.1.6, 4.1.2.6, 4.1.3.4.1, 4.1.3.4.2, 4.1.3.7, 4.1.3.8 repealed eff. 10/19/2023.

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Office of the Attorney General

Tracking number: 2023-00557

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

Division of Public School Capital Construction Assistance

on 10/19/2023

1 CCR 303-3

BUILDING EXCELLENT SCHOOLS TODAY GRANT PROGRAM

The above-referenced rules were submitted to this office on 10/23/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 06, 2023 09:46:22

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - State Plumbing Board

CCR number

3 CCR 720-1

Rule title

3 CCR 720-1 PLUMBING RULES AND REGULATIONS 1 - eff 12/15/2023

Effective date

12/15/2023

DEPARTMENT OF REGULATORY AGENCIES

State Plumbing Board

PLUMBING RULES AND REGULATIONS

3 CCR 720-1

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

…

1.2 STANDARDS

…

E. Revisions and Exceptions to the Incorporated Codes

1. Revisions and Exceptions to the Colorado Plumbing Code

…

s. IPC Section 403.3 Employee and public toilet facilities, effective January 1, 2024

Add a new paragraph to the end of the section to read as follows:

All state departments (excluding K-12 schools), state agencies, state institutions of higher education, counties, cities, or municipality buildings that are newly constructed or are being remodeled shall provide an ADA-compliant single-user or an ADA-compliant multi-user non-gendered restrooms as required by section 9-5.7-103, C.R.S.

t. IPC Section 405.3.2 Public Lavatories

…

u. IPC Section 410.4 Substitution.

…

v. IPC Section 421.7 Shower head location

…

w. IPC Section 421.8 Shower valve location

…

x. IPC Section 425.3 Water closet seats

…

y. IPC Section 504.6.1 Collection of Relief Valve Discharge

…

z. IPC Section 504.6.1.1 Pumped discharge of relief valve collection

…

aa. IPC Section 504.7 Required pan.

…

bb. IPC Section 504.7 Required pan.

…

cc. IPC Section 605.15.2 Solvent cementing

…

dd. IPC Section 608.3.1 Special equipment, water supply protection

…

ee. IPC Section 608.9.1 Signage required

…

ff. IPC Section 608.9.2 Distribution pipe labeling and marking

…

gg. IPC Section 608-17 Connections to the Potable Water Systems

…

hh. IPC Section 608 Protection of potable water system

…

ii. IPC Section 701.2 Connection to sewer required

…

jj. IPC Section 705.10.2 Solvent cementing

…

kk. IPC Section 706.3. Installation of fittings

…

ll. IPC Table 706.3 Fittings for change of direction

…

mm. IPC Section 708.1.3 Building drain and building sewer junction.

…

nn. IPC Section 802.1.8 Domestic dishwashing machines

…

oo. IPC Section 802.3 Installation

…

pp. IPC Section 802.4 Waste receptors.

…

qq. IPC Section 903.1.1 Roof extension unprotected

…

rr. IPC Section 903.1.3 Protected vent terminal

…

ss. IPC Section 903.2 Frost Closure

…

tt. IPC Section 912.1 Horizontal wet vent permitted

…

uu. IPC Section 1002.1 Fixture traps

…

vv. IPC Section 1003.1 Where required

…

ww. IPC.1003.2.3 Food waste disposers restriction.

…

xx. IPC Section 1101.3 Prohibited drainage

…

yy. IPC Section 1301.2.2 Filtration Required Exception

…

zz. IPC Section 1301 General

…

aaa. IPC Section 1301.3.2 Signage required graywater treatment works.

…

bbb. IPC Section 1301 General

…

ccc. IPC Section 1301 General

…

ddd. IPC Section 1301 General

…

eee. IPC Section 1301 General

…

fff. IPC Section 1301.9.2 Materials Exception Add section

…

ggg. IPC Section 1301.9.5 Overflow

…

hhh. IPC Section 1301.9.8 Draining of tanks

…

iii. IPC Section 1301.11 Trenching Requirements

…

jjj. IPC Section 1301.12 Outdoor Outlet Access

…

kkk. IPC Section 1302.1 General

…

lll. IPC Section 1302.5 Filtration

…

mmm. IPC Section 1302.6.1 Graywater used for fixture flushing

…

nnn. IPC Section 1302.7.3 Overflow

…

ooo. IPC Section 1302.7.4 Venting

…

ppp. IPC Section 1302.7.5 Tank Drains

…

qqq. IPC Section 1302.8.1 Bypass Valve

…

rrr. IPC Section 1303 Nonpotable rainwater collection and distribution systems

…

sss. IPC Chapter 14 Subsurface landscape irrigation systems

…

Editor's Notes

History

Entire rule eff. 01/01/2008.

Entire rule eff. 04/01/2010.

Rules 2.3.A, 2.4.1-2.4.2, 6.4 eff. 09/01/2011.

Entire rule eff. 03/15/2014.

Rules 2.3, 3.1 eff. 12/15/2014.

Entire rule eff. 02/14/2016.

Rules 2.5.1.27, 4.1, 4.2, 4.5.4, 4.5.5, 4.6-4.13, 6.1, 7.4 eff. 04/01/2016.

Rules 1.2 A-C, 1.2 D.4, 1.2 D.7-10, 1.2 E, 1.3, 1.4 A, 1.4 E, 1.6 B.8 eff. 06/14/2020. Rule 1.4.D repealed eff. 06/14/2020.

Rule 1.3 C eff. 08/30/2021.

Rule 1.4 L.2 eff. 12/15/2021.

Rule 1.10 emer. rule eff. 10/26/2022.

Rule 1.10 eff. 12/15/2022.

Rules 1.2, 1.3 A,B, 1.4 A,B,E,L, 1.5 E, 1.7 D eff. 04/14/2023.

Annotations

Rules 1.10 B. and 1.10 C. (adopted 10/26/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

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Office of the Attorney General

Tracking number: 2023-00600

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

Division of Professions and Occupations - State Plumbing Board

on 10/25/2023

3 CCR 720-1

PLUMBING RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 10/25/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 13, 2023 12:03:13

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-3

Rule title

4 CCR 723-3 RULES REGULATING ELECTRIC UTILITIES 1 - eff 12/15/2023

Effective date

12/15/2023

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-3

PART 3
RULES REGULATING ELECTRIC UTILITIES

3652. Definitions.

The following definitions apply only to rules 3650 – 3668. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Annual compliance report" means the report a QRU is required to file annually with the Commission pursuant to rule 3662 to demonstrate compliance with the RES.

(b) "Benefiting meter" means a utility meter serving a unit or a common area in a multi-unit property that receives a system share of retail distributed generation. Benefiting meters that receive a system share of retail distributed generation located on a multi-unit property may be on different rate schedules and need not be physically interconnected with the retail distributed generation system. A multi-unit property owner or unit owners' association may be the customer of record for more than one benefiting meter at a multi-unit property.

(c) "Biomass" means nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush; animal wastes and products of animal wastes; or methane produced at landfills or as a by-product of the treatment of wastewater residuals. With respect to nontoxic plant matter obtained from forests, both slash and brush shall mean products and materials derived from forest restoration and management, including, but not limited to, harvesting residues, pre-commercial thinning, and materials removed as part of a federally recognized timber sale or removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health.

(d) "Coal mine methane" means methane captured from inactive coal mines where the methane is escaping to the atmosphere or from active coal mines where the methane vented in the normal course of mine operations is naturally escaping to the atmosphere.

(e) "Community-based project" means a project that meets the following three conditions: the project is owned by individual residents of a community, by an organization or cooperative that is controlled by individual residents of the community, by a local government entity, or by a tribal council; the project's generating capacity does not exceed 30 MW; and, there exists a resolution of support adopted by the local governing body of each local jurisdiction in which the project is to be located.

(f) "Community solar garden" or "CSG" means a solar electric generation facility with a nameplate rating of two MW or less that is located in or near a community served by a QRU where the beneficial use of the renewable energy generated by the facility belongs to the subscribers of the CSG. A CSG shall have at least ten CSG subscribers. A CSG shall be deemed to be located on the site of each subscribing customer's facilities for the purpose of crediting the CSG subscribers' bills for the renewable energy purchased from the CSG by the QRU. The renewable energy generated by a CSG shall be sold only to the QRU serving the geographic area where the CSG is

located. The renewable energy generated by a CSG shall constitute retail renewable distributed generation under paragraph 3652(ff).

(g) "Compliance plan" means the annual plan a QRU is required to file with the Commission pursuant to rule 3657.

(h) "Compliance year" means a calendar year for which the RES is applicable.

(i) "CSG owner" means the owner of the solar generation facilities installed at a CSG that contracts to sell the unsubscribed renewable energy and RECs generated by the CSG to a QRU. A CSG subscriber organization operating a CSG not owned by it will be deemed to be a CSG owner for purposes of these rules. A CSG owner may be the QRU or any other for-profit or nonprofit entity or organization, including a CSG subscriber organization.

(j) "CSG subscriber" means a retail customer of a QRU who owns a subscription to a CSG and who has identified one or more premises served by the QRU to which the CSG subscription shall be attributed.

(k) "CSG subscriber organization" means any for-profit or nonprofit entity permitted by Colorado law and whose sole purpose shall be:

(I) to beneficially own and operate the CSG; or

(II) to operate the CSG that is built, owned, and operated by a third party under contract with such CSG subscriber organization.

(l) "CSG subscription" means a proportionate interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy and RECs associated with or attributable to the CSG.

(m) "Early eligible energy resources" are eligible energy resources, excluding retail renewable distributed generation, where the utility certifies that the resource is commercially operational and can produce energy under the terms of its contract, prior to January 1, 2015.

(n) "Eligible energy" means renewable energy, recycled energy, or greenhouse gas neutral electricity generated by a facility using coal mine methane or synthetic gas.

(o) "Eligible energy resources" are renewable energy resources or facilities that generate recycled energy or greenhouse gas neutral electricity generated using coal mine methane or synthetic gas.

(p) "Eligible low-income CSG subscriber" means a residential customer of an investor owned QRU who:

(I) has a household income at or below 165 percent of the current federal poverty level, as published each year in the federal register by the U.S. Department of Health and Human Services; and

(II) otherwise meets the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

(q) "Generation meter" means a utility production meter or production meters that measure the output of a retail distributed generation system that is allocated to benefiting meters. The retail distributed generation system may be owned by the owner of the multi-unit property, a unit owners' association,

or a designee of the owner or unit owners' association of the multi-unit property. A retail distributed generation system located on a multi-unit property may have more than one point of interconnection and the total output of such a system shall be measured by aggregating the output of each production meter.

(r) "Greenhouse gas neutral electricity" means electricity generated by facilities using coal mine methane or synthetic gas that the Commission has determined to be greenhouse gas neutral on a CO_2 equivalent basis pursuant to § 40-2-124(1)(a)(IV), C.R.S.

(s) "Multi-unit property" means a property, including two or more contiguous parcels under common ownership, divided into at least two non-residential or two separate residential units, or both, including common interest communities without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of- way.

(t) "On-site solar system" means a solar renewable energy system that is retail renewable distributed generation.

(u) "Person" means Commission staff or any individual, firm, partnership, corporation, company, association, cooperative association, joint stock association, joint venture, governmental entity, or other legal entity.

(v) "Pyrolysis" means the thermochemical decomposition of material at elevated temperatures without the participation of oxygen.

(w) "Qualifying retail utility" or "QRU" means any provider of retail electric service in the state of Colorado other than municipally owned electric utilities that serve 40,000 customers or fewer.

(x) "Qualifying wholesale utility" means a generation and transmission cooperative electric association that provides wholesale electric service directly to Colorado cooperative electric associations that are its members.

(y) "Recycled energy" means energy produced by a generation unit with a nameplate capacity of not more than fifteen MW that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel. Recycled energy does not include energy produced by any system that uses energy, lost or otherwise, from a process whose primary purpose is the generation of electricity, including, without limitation, any process involving engine-driven generation or pumped hydroelectricity generation.

(z) "Renewable distributed generation" means retail renewable distributed generation and wholesale renewable distributed generation.

(aa) "Renewable energy" means energy generated from renewable energy resources including renewable distributed generation.

(bb) "Renewable energy credit" or "REC" means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from a renewable energy resource. One REC results from one MWH of electric energy generated from a renewable energy resource. For the purposes of these rules, RECs acquired from on-site solar systems before August 11, 2010 shall qualify as RECs from retail renewable distributed generation for purposes of demonstrating compliance with the renewable energy standard. RECs acquired from off-grid on-site solar systems prior to August 11, 2010 shall also qualify as RECs

from retail renewable distributed generation for purposes of demonstrating compliance with the renewable energy standard.

(cc) "Renewable energy credit contract" means a contract for the sale of renewable energy credits without the associated energy.

(dd) "Renewable energy resource" means facilities that generate electricity by means of the following energy sources: solar radiation, wind, geothermal, biomass, hydropower, and fuel cells using hydrogen derived from eligible energy resources. Fossil and nuclear fuels and their derivatives are not eligible energy resources. Hydropower resources in existence on January 1, 2005 must have a nameplate rating of 30 MW or less. Hydropower resources not in existence on January 1, 2005 must have a nameplate rating of ten MW or less.

(ee) "Renewable energy standard" or "RES" means the electric resource standard for eligible energy resources specified in § 40-2-124, C.R.S.

(ff) "Renewable energy standard adjustment" or "RESA" means a forward-looking cost recovery mechanism used by an investor owned QRU to provide funding for implementing the RES.

(gg) "Renewable energy supply contract" means a contract for the sale of renewable energy and the RECs associated with such renewable energy. If the contract is silent as to renewable energy credits, the renewable energy credits will be deemed to be combined with the energy transferred under the contract.

(hh) "Retail electricity sales" means electric energy sold to retail end-use electric consumers by a QRU or an electric utility that is eligible to become a QRU pursuant to § 40-2-124(5)(b), C.R.S,

(ii) "Retail renewable distributed generation" means a renewable energy resource that is located on the premises of an end-use electric consumer and is interconnected on the end-use electric consumer's side of the meter. For the purposes of this definition, the non-residential end-use electric customer, prior to the installation of the renewable energy resource, shall not have its primary business being the generation of electricity for retail or wholesale sale from the same facility. In addition, at the time of the installation of the renewable energy resource, the non-residential end-use electric customer must use its existing facility for a legitimate commercial, industrial, governmental, or educational purpose other than the generation of electricity. Retail renewable distributed generation shall be sized to supply no more than 120 percent of the average annual consumption of electricity by the end-use electric consumer at that site. The end-use electric consumer's site shall include all contiguous property owned or leased by the consumer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

(jj) "Rural renewable project" means a renewable energy resource with a nameplate rating of 30 MW or less that interconnects to electric transmission or distribution facilities owned by a cooperative electric association or municipally owned utility at a point of interconnection of 69 kV or less.

(kk) "Service entrance capacity" means the capacity of the QRU's electric service conductors that are physically connected to the customer's electric service entrance conductors.

(ll) "Solar renewable energy system" means a system that uses solar radiation energy to generate electricity.

(mm) "Standard rebate offer" or "SRO" means a standardized incentive program offered by a QRU to its retail electric service customers for on-site solar systems as set forth in rule 3658.

(nn) "Synthetic gas" means gas fuel produced through the pyrolysis of municipal solid waste.

(oo) "System share" means the percentage of the output of a retail distributed generation system or systems associated with a generation meter to which a benefiting meter is allocated. The system share of a generation meter allocated to each benefiting meter shall be determined by the multi-unit property owner, their designee, or the unit owners' association and provided to the QRU on a designated form provided by the QRU.

(pp) "Unit owners' association" shall have the same meaning as in § 38-33.3-103, C.R.S.

(qq) "Wholesale renewable distributed generation" means a renewable energy resource with a nameplate rating of 30 MW or less that does not qualify as retail renewable distributed generation.

* * * *

[indicates omission of unaffected rules]

3664. Net Metering.

(a) Except as provided in paragraph 3664(i), all investor owned QRUs shall allow the customer's retail electricity consumption to be offset by the electricity generated from retail renewable distributed generation, provided that the generating capacity of the customer's facility meets the following two criteria:

(I) the retail renewable distributed generation shall be sized to supply no more than 120 percent of the customer's average annual electricity consumption at that site, where the site includes all contiguous property owned or leased by the consumer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way; and

(II) the rated capacity of the retail renewable distributed generation does not exceed the customer's service entrance capacity.

(b) If a customer with retail renewable distributed generation generates renewable energy pursuant to paragraph 3664(a) in excess of the customer's consumption, the excess kWh shall be carried forward from month to month and credited at a ratio of 1:1 against the customer's retail kWh consumption in subsequent months. Within 60 days of the end of each calendar year, or within 60 days of when the customer terminates its retail service, the investor owned QRU shall compensate the customer for any accrued excess kWh credits, at the investor owned QRU's average hourly incremental cost of electricity supply over the most recent calendar year. However, the customer may make a one-time election, in writing, on or before the end of a calendar year, to request that the excess kWh be rolled over as a credit from month to month indefinitely until the customer terminates service with the investor owned QRU, at which time no payment shall be required from the investor owned QRU for any remaining excess kWh credits supplied by the customer.

(c) A customer's retail renewable distributed generation shall be equipped with metering equipment that can measure the flow of electric energy in both directions. The investor owned QRU shall utilize a single bi-directional electric meter.

(d) If the customer's existing electric meter does not meet the requirements of these rules, the investor owned QRU shall install and maintain a new meter for the customer, at the company's expense. Any subsequent meter change necessitated by the customer shall be paid for by the customer.

(e) The investor owned QRU shall not require more than one meter per customer to comply with this rule 3664. Nothing in this rule 3664 shall preclude the QRU from placing a second meter to measure the output of a solar renewable energy system for the counting of RECs subject to the following conditions.

(I) For customer facilities over ten kW, a production meter shall be required to measure the solar renewable energy system output for the counting of RECs.

(II) For systems ten kW and smaller, a production meter may be installed under either of the following circumstances:

(A) the QRU may install a production meter on the solar renewable energy system output at its own expense if the customer consents; or

(B) the customer may request that the QRU install a production meter on the solar renewable energy system output in addition to the meter at the customer's expense.

(III) If the on-site solar system is not owned by the electric consumer, the owner or operator of the on-site solar system shall pay the cost of installing the production meter.

(f) An investor owned QRU shall provide net metering service at non-discriminatory rates to customers with retail renewable distributed generation. A customer shall not be required to change the rate under which the customer received retail service in order for the customer to install retail renewable distributed generation. Nothing in this rule shall prohibit an investor owned QRU from requesting changes in rates at any time.

(g) Unless the Commission approves under § 40-2-124(1)(g)(IV)(B), C.R.S., an alternative surcharge for net metered customers served by an investor owned QRU, the investor owned QRU shall bill a retail customer receiving net metering service a surcharge to supplement that customer's contribution toward the investor owned QRU's RESA account.

(I) For retail renewable distributed generation that is production metered, the surcharge shall increase the customer's total contribution to the investor owned QRU's RESA account to the calculated level it would have been had all of the customer's consumption been billed at the investor owned QRU's applicable rates.

(II) For retail renewable distributed generation that is not production metered, the surcharge shall increase the customer's total contribution to the investor owned QRU's RESA account as follows, based upon the size of the customer's system.

(A) For customers with a system that is from 500 watts to five kW, a 500 kWh volume proxy shall be used. The 500 kWh volume proxy will be multiplied by the current monthly per kWh effective residential energy rate and effective riders. That product will then be multiplied by two percent to obtain the customer's RESA contribution amount.

(B) For customers with a system that is from five kW up to ten kW, a 1,000 kWh volume proxy shall be used. The 1,000 kWh volume proxy will be multiplied by the current monthly per kWh effective residential energy rate and effective riders. That product will then be multiplied by two percent to obtain the customer's RESA contribution amount.

(h) If more than one meter is used to measure the electricity consumption of a customer with retail renewable distributed generation at the premises where the retail renewable distributed generation is installed, the following provisions apply:

(I) An investor owned QRU must, upon request from such customer, aggregate for billing purposes a meter to which the retail renewable distributed generation is physically attached (the designated meter) with one or more meters (the additional meters) in the manner set out in this paragraph when each additional meter is located on the customer's contiguous property.

(II) A net metering customer must give at least 30 days' notice to the QRU to request that additional meters be aggregated pursuant to this paragraph. The specific designated and additional meters must be identified at the time of such request. In the event that more than one additional meter is identified, the utility shall apply the net metering kWh credits to the sum of the kWh consumption as measured by the designated and additional meters.

(III) If, in a monthly billing period, the customer's retail renewable distributed generation generates more renewable energy than the customers' consumption as measured by the designated and additional meters, the excess kWh credits will be rolled over as a credit from month to month indefinitely until the customer terminates service with the investor owned QRU, at which time no payment shall be required from the investor owned QRU for any remaining excess kWh credits supplied by the customer.

(IV) Meters aggregated pursuant to this paragraph may be on different rate schedules.

(i) Multi-unit properties with separately metered units, including mixed-use buildings with units that take service on different utility rate schedules and common interest communities managed by unit owners' associations shall be eligible for net metering. Multi-unit properties with a retail distributed generation system interconnected to a designated generation meter to may allocate kilowatt-hour credits to any onsite benefiting meter(s) in accordance with a property owner-defined system share so long as the annual energy production from the system share will supply no more than 200 percent of the benefiting meter's reasonably expected average annual electricity consumption.

(I) An investor owned QRU shall offset the retail electricity consumption of a benefiting meter at a multi-unit property that is not master metered with electricity produced by the generation from a generation meter at the same multi-unit property consistent with the system share allocated to the benefitting meter.

(II) An investor owned QRU shall attribute electricity produced by the generation meter on a kilowatt-hour basis consistent with each benefiting meter's system share. The QRU shall calculate and provide kilowatt-hour credits for each benefiting meter at a multi-unit property based on the system share of the benefiting meter and the retail rate schedule on which the benefiting meter takes service. For any benefiting meter that takes service on a time-varying rate schedule, the investor owned QRU shall track the time period during which energy was produced at the generation meter (e.g., on-peak, shoulder, or off-

peak, as applicable) and apply kilowatt-hour credits to each benefitting meter at the corresponding time period (e.g., on-peak, should, or off-peak, as applicable).

(III) If the electricity produced by a system share from the generation meter exceeds the consumption of the benefiting meter associated with such system share during a month, the excess kilowatt-hours shall be carried forward from month to month and credited based on the time period during which the kilowatt-hours were produced at a ratio of 1:1 against the benefiting meter's retail kilowatt-hour consumption in subsequent months. On an annual basis the benefiting meter may roll-over no more than 100 percent of the reasonably expected annual usage of the benefiting meter and any excess above 100 percent may, at the customer's election in writing, be cashed-out to the benefitting meter at the investor owned QRU's average hourly incremental cost. When the benefiting meter terminates service, any excess shall be applied to a common area benefiting meter that is designated by the property owner.

(IV) The multi-unit property owner or unit owners' association must provide the system share allocated to each designated onsite benefiting meter to the investor owned QRU on a designated form, which may be updated no more than two times per year. The QRU shall implement changes to the allocation of system shares among benefiting meters within 30 days after a multi-unit property owner or unit owners' association submits the designated form to the QRU.

(V) A multi-unit property owner or unit owners' association must give at least 60 days' notice to the QRU to request net metering at a multi-unit property. The generation meter, each benefiting meter, and the system share of each benefiting meter must be identified at the time of request. The QRU must begin billing and crediting each benefiting meter at the retail rate schedule on which each benefiting meter takes service within 60 days of a completed request.

(j) Pursuant to § 24-33-115(2), C.R.S., for the Colorado Division of Parks and Outdoor Recreation (CDPOR) as the customer of an investor owned QRU, the investor owned QRU may, on a case-by-case or project-by-project basis:

(I) waive any existing limits on the net metering of electricity generated on contiguous property constituting the CDPOR customer's site;

(II) waive any existing limits on generating capacity or customer service entrance capacity if the customer proposes to make any necessary upgrades to its service entrance capacity at its own expense; and

(III) have the right of first refusal to purchase, and the right not to purchase, electricity from retail renewable distributed generation that is sized to provide more than 120 percent of the average annual consumption of electricity by the CDPOR customer at that site. If the investor owned QRU exercises its option to purchase excess generation under this subparagraph 3664(i)(III), it may claim the RECs based on such purchases.

(IV) This paragraph does not confer upon CDPOR the right to make retail sales of electricity or distribute electricity to other state agencies or to noncontiguous properties.

3665. [Reserved].

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Office of the Attorney General

Tracking number: 2023-00039

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

Public Utilities Commission

on 10/25/2023

4 CCR 723-3

RULES REGULATING ELECTRIC UTILITIES

The above-referenced rules were submitted to this office on 10/26/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 13, 2023 12:11:20

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Marriage and Family Therapist Examiners

CCR number

4 CCR 736-1

Rule title

4 CCR 736-1 MARRIAGE AND FAMILY THERAPIST EXAMINERS RULES AND REGULATIONS 1 - eff 12/15/2023

Effective date

12/15/2023

DEPARTMENT OF REGULATORY AGENCIES

Board of Marriage and Family Therapist Examiners

MARRIAGE AND FAMILY THERAPIST EXAMINERS RULES AND REGULATIONS

4 CCR 736-1

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

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Editor's Notes

History

Rule 17(a) emer. rule eff. 10/26/2007; expired eff. 01/26/2008.
Rule 17 eff. 03/01/2008.
Purpose and Scope, rules 12, 15, 19, 20 emer. rules eff. 01/01/2011.
Purpose and Scope, rules 12, 15, 19, 20 eff. 02/01/2011.
Entire rule emer. rule eff. 12/09/2011.
Entire rule eff. 02/01/2012.
Rule 12 eff. 05/02/2016.
Rules 1.6 A, 1.14 A, 1.14 C.1, 1.14 C.6.a, 1.16 A emer. rules eff. 10/23/2020.
Rules 1.6 A, 1.12, 1.14 A, 1.14 C.1, 1.14 C.6.a, 1.16 A, 1.22, Appendix A eff. 12/15/2020.
Rules 1.6 A, 1.12 C-D, 1.22, Appendix A eff. 06/30/2021.
Rule 1.8 B eff. 12/30/2021.
Rules 1.24, 1.25 emer. rules eff. 10/28/2022.
Rules 1.12, 1.23-1.25, Appendix B eff. 12/15/2022.

Annotations

Rules 1.12 C., 1.12 D., 1.22 E.4. (adopted 10/23/2020) were not extended by Senate Bill 21-152 and therefore expired 05/15/2021.

Rules 1.25 B. and 1.25 C. (adopted 10/28/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

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Office of the Attorney General

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

Division of Professions and Occupations - Board of Marriage and Family Therapist Examiners

on 10/27/2023

4 CCR 736-1

MARRIAGE AND FAMILY THERAPIST EXAMINERS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 10/27/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 02, 2023 09:28:56

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-2

Rule title

5 CCR 1001-2 COMMON PROVISIONS REGULATION 1 - eff 12/15/2023

Effective date

12/15/2023

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

COMMON PROVISIONS REGULATION

5 CCR 1001-2

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

Outline of Regulation

I. Definitions, Statement of Intent, and General Provisions Applicable to All Emission Control Regulations Adopted by the Colorado Air Quality Control Commission

I.A. Applicability

Emission control regulations adopted by the Air Quality Control Commission apply throughout Colorado unless otherwise stipulated. The Statement of Intent, Definitions, and General Provisions of this regulation apply to all emission control regulations adopted by the Commission unless otherwise stipulated.

Pursuant to Colorado Revised Statutes § 24-4-103(12.5), copies of materials incorporated by reference are available for public inspection during regular business hours, or copies may be obtained at a reasonable cost from the Technical Secretary of the Air Quality Control Commission (the Commission), located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. Materials incorporated by reference may also be available through the United States Government Printing Office, online at www.govinfo.gov. Materials incorporated by reference are those editions in existence as of the date of this regulation as promulgated or revised by the Commission and references do not include later amendments to or editions of the incorporated materials.

I.B. Authority

Colorado Revised Statutes § 25-7-109 provides: As promptly as possible, the Commission shall adopt and promulgate, and from time to time modify or repeal emission control regulations which require the use of effective practical air pollution controls. Colorado Revised Statutes §§ 25-7-105 through 25-7-110, § 25-7-114 and § 25-7-117 are the general statutory authority for adoption by the Commission of standards, regulations, and programs.

I.C. Colorado Air Pollution Prevention and Control Act: Colorado Revised Statutes § 25-7-102 (Legislative Declaration)

In order to foster the health, welfare, convenience, and comfort of the inhabitants of the state of Colorado and to facilitate the enjoyment and use of the scenic and natural resources of the state, it is declared to be the policy of this state to achieve the maximum practical degree of air purity in every portion of the state, to attain and maintain the National Ambient Air Quality Standards, and to prevent the significant deterioration of air quality in those portions of the state where the air quality is better than the National Ambient Air Quality Standards.

To that end, it is the purpose of this article to require the use of all available practical methods that are technologically feasible and economically reasonable so as to reduce, prevent, and control air pollution throughout the state of Colorado; to require the development of an air quality control program in which the benefits of the air pollution control measures utilized bear a reasonable relationship to the economic, environmental, and energy impacts and other costs of such measures; and to maintain a cooperative program between the state and local units of government. It is further declared that the prevention, abatement, and control of air pollution in each portion of the state are matters of statewide concern and are affected with a public interest and that the provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

The General Assembly further recognizes that a current and accurate inventory of actual emissions of air pollutants from all sources is essential for the proper identification and designation of attainment and nonattainment areas, the determination of the most cost effective regulatory strategy to reduce pollution, the targeting of regulatory efforts to achieve the greatest health and environmental benefits, and the achievement of a federally approved clean air program. In order to achieve the most accurate inventory of air pollution sources possible, this article specifically provides incentives to achieve the most accurate and complete inventory possible, and to provide for the most accurate enforcement program achievable based upon that inventory.

I.D. Intent

To implement the legislative declaration and other sections of the Act, the Commission declares that it is the intent and purpose of these regulations is to:

I.D.1. Achieve and maintain levels of air quality that will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, prevent unreasonable interference with the public welfare, preserve visibility, and protect scenic, aesthetic and historic values of Colorado;

I.D.2. Require the use of all available practicable methods to reduce, prevent, and control air pollution for the protection of the health, safety, and general welfare of the people of the state of Colorado. In order to achieve air purity consistent with this intent, it may be necessary, ultimately to control air pollutant emissions to such a degree of opacity so that the emissions are no longer visible;

I.D.3. Prevent significant degradation of Colorado's air resource;

I.D.4. Prevent odors and other air pollution problems which interfere with the comfortable enjoyment of life; and

I.D.5. Apply the major resources of the Colorado air pollution control programs toward solving priority air pollution problems.

I.E. Growth

The Commission recognizes that the growth in the amount and complexity of air pollution in Colorado is brought about by, and incident to, population growth, mobility, increased affluence, industrial development and changing social values in said state.

The Commission believes that the air pollution problem is likely to be aggravated and compounded by additional population growth, mobility, affluence, industrial development, and changing social values in the future, that are likely to result in serious potential danger to the public and the environment. Therefore, the Commission intends to pursue solutions, in conjunction with other appropriate agencies and interests that have a direct interest and capability in solving a growing air pollution problem(s) in relation to the broader environmental degradation problem. It is the intent of the Commission to coordinate with industrial, commercial, agricultural, and transportation planning organizations, land use, and other environmental organizations, the public, the legislature, educational organizations, and other major interests in such a manner as to prevent air pollution in Colorado.

I.F. Abbreviations

Abbreviations used in the Commission's regulations have the following meaning:

ASTM	American Society For Testing And Materials
APEN	Air Pollutant Emission Notice
AQCR	Air Quality Control Region
AQRV	Air Quality Related Value
BACT	Best Available Control Technology
BART	Best Available Retrofit Technology
BTU	British Thermal Unit
°C	Degree Celsius (Centigrade)
cal	Calorie
CAS	Chemical Abstract Service
CCR	Code Of Colorado Regulations
CdS	Cadmium Sulfide
Cfm	Cubic Feet Per Minute
CFR	Code Of Federal Regulations
CO	Carbon Monoxide
CO2	Carbon Dioxide
CO2e	Carbon Dioxide Equivalent

CEM	Continuous Emission Monitoring
COM	Continuous Opacity Monitoring
C.R.S.	Colorado Revised Statutes
dscm	Dry Cubic Meter(s) At Standard Conditions
dscf	Dry Cubic Feet At Standard Conditions
U.S. EPA	United States Environmental Protection Agency
ERC	Emission Reduction Credit
eq	Equivalence
°F	Degree Fahrenheit
FLM	Federal Land Manager
Fed. Reg.	Federal Register
FS	Forest Service
ft	Feet
g	Gram(s)
GACT	Generally Available Control Technology
gal	Gallon(s)
GHG	Greenhouse Gas
g eq	Gram Equivalent
GEP	Good Engineering Practice
gr	Grain(s)
hr	Hour(s)
HAP(s)	Hazardous Air Pollutant(s)
HC	Hydrocarbons
HCl	Hydrochloric Acid
Hg	Mercury
H2O	Water
H2S	Hydrogen Sulfide
H2SO4	Sulfuric Acid
hz	Hertz

in	Inch(s)
J	Joule
°K	Degree Kelvin
kg	Kilogram(s)
LAER	Lowest Achievable Emission Rate
l	Liter(s)
lpm	Liter(s) Per Minute
lb	Pound(s)
LTS	Long Term Strategy For Visibility Protection
m	Meter(s)
MACT	Maximum Achievable Control Technology
m eq	Milli Equivalent(s)
min	Minute(s)
mg	Milligram(s)
ml	Milliliter(s)
mm	Millimeter(s)
mol	Mole
mol. wt.	Molecular Weight
mV	Millivolt
N	Newton
NA(s)	Nonattainment Area(s)
NAAQS	National Ambient Air Quality Standards
NESHAP	National Emission Standards For Hazardous Air Pollutants
N2	Nitrogen
Ng	Nanogram (10^{-9} Grams)
NPS	National Park Service
NO	Nitric Oxide
NO2	Nitrogen Dioxide
NOx	Nitrogen Oxides

NRVOC(s)	Negligibly Reactive Volatile Organic Compound(s)
NSPS	New Source Performance Standards
NSR	New Source Review
O	Ohm
O2	Oxygen
Pa	Pascal
PM	Particulate Matter
PM10	Particulate Matter With Diameter Of 10 Microns Or Less
PM2.5	Particulate Matter With Diameter Of 2.5 Microns Or Less
ppb	Parts Per Billion
ppm	Parts Per Million
PSD	Prevention Of Significant Deterioration
psia	Pounds Per Square Inch Absolute
psig	Pounds Per Square Inch Gauge
PTE	Potential To Emit
RACT	Reasonably Available Control Technology
°R	Degree Rankine
RFP	Reasonable Further Progress
Sec	Second
SIP	State Implementation Plan
SO2	Sulfur Dioxide
SO3	Sulfur Trioxide
SOx	Sulfur Oxides
STP	Standard Temperature And Pressure
TPY	Tons Per Year
TSP	Total Suspended Particulates
Mg	Microgram(s) (10^{-6} Gram)
USC	United States Code
VAC	Volts Alternating Current

VDC	Volts Direct Current
V	Volt
VOC	Volatile Organic Compound
W	Watt

I.G. Definitions

The following words and phrases shall have the following meanings unless the context in which they are used requires specific meaning within separate Commission regulations. In those instances, words and phrases shall be defined in the appropriate regulation.

ABSOLUTE VAPOR PRESSURE

The pressure relative to an absolute vacuum that a confined vapor exerts at a given temperature when in equilibrium with its solid or liquid state.

ACT

The "Colorado Air Pollution and Prevention Control Act". Colorado Revised Statutes Title 25, Article 7.

AIR POLLUTANT

Any fume, smoke, particulate matter, vapor, gas, or any combination thereof that is emitted into or otherwise enters the atmosphere, including, but not limited to, any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product materials) substance or matter, but not including water vapor or steam condensate or any other emission exempted by the Commission consistent with the Federal Act. Such term includes any precursors to the formation of any air pollutant, to the extent the administrator of the U.S. EPA or the Commission has identified such precursor(s) for the particular purpose for which the term "air pollutant" is used.

AIR POLLUTION

Any concentration of one or more air pollutants in the ambient air that has caused, is causing, or if unabated, may cause injury to human, plant, or animal life, or injury to property, or which unreasonably interferes with the comfortable enjoyment of life or property or with the conduct of business.

AIR POLLUTION CONTROL AUTHORITY

The Division or any person or agency given authority by the Division or a local government unit duly authorized with respect to air pollution control.

ALTERNATIVE METHOD

Any method of sampling and analysis for an air pollutant that is not a reference or equivalent method, but has been approved by the Division.

AMBIENT AIR

That portion of the atmosphere, external to the source, to which the general public has access.

AREA CLASSIFICATION

The Commission and the U.S. EPA have designated the entire state into attainment, nonattainment or unclassifiable areas.

ASPHALT CONCRETE PLANT

Any facility used to manufacture asphalt concrete by heating and drying aggregate and mixing with asphalt compounds.

ASPHALT PAVING MATERIAL

A petroleum based asphaltic compound used in the preparation of asphalt concrete for application to roads, highways, and streets.

ATMOSPHERE

The surrounding or outside air i.e. external to buildings. Emissions of air pollutants from a building or structure not specifically designed to control pollutant emissions from sources within such building or structure shall constitute an emission into the ambient air or atmosphere.

ATTAINMENT AREA

Any area within Colorado designated by the Commission and approved by the U.S. EPA in which the ambient air concentrations of any designated pollutants are less than that specified in the National Ambient Air Quality Standards.

BULK PLANT

A petroleum distillate storage and distribution facility that has an average daily throughput of 76,000 liters (20,000 gallons) or less which is loaded directly into delivery vehicles. (As used herein, “bulk plant” does not include service stations or a separate operation within a petroleum distribution facility that pumps only into fuel tanks fueling motor vehicles and trucks.)

CAPACITY FACTOR

The ratio of average load to the capacity rating of the machine or equipment for the specified period of time.

CAPTURE SYSTEM

The equipment, including hoods, ducts, fans, dampers, etc., used to capture or transport air pollutants.

CARBON DIOXIDE EQUIVALENT

A metric used to compare the emissions from various GHGs based upon their global warming potential (GWP). CO2e is determined by multiplying the mass amount of emissions (tons per year), for each GHG constituent by that gas’s GWP, and summing the resultant values to determine CO2e (tons per year). The applicable GWPs codified in 40 CFR Part 98, Subpart A, Table A-1 – Global Warming Potentials are hereby incorporated by reference as in effect as of December 11, 2014, but not including later amendments.

CLAUS SULFUR RECOVERY PLANT

A process unit that recovers sulfur from hydrogen sulfide by a vapor-phase catalytic reaction involving sulfur dioxide and hydrogen sulfide.

COAL

All solid fossil fuels classified as anthracite, bituminous, sub-bituminous, or lignite by the appropriate American Society for Testing and Materials method.

COAL PREPARATION PLANT

Any facility (excluding underground mining operations), which prepares coal by one or more of the following processes: breaking, wet or dry cleaning, crushing, screening, and thermal drying.

COAL PROCESSING AND CONVEYING EQUIPMENT

Any machinery used to reduce the size of coal or to separate coal from refuse; the equipment used to convey coal or to remove coal from refuse; the equipment used to convey coal or to remove coal and refuse from the machinery including, but not limited to, breakers, crushers, screens, and conveyor belts.

COAL REFUSE

Waste products of coal mining, cleaning, and preparation.

COAL STORAGE SYSTEM

Any facility used to store coal except for open storage areas.

COMMISSION

The Air Quality Control Commission created by Colorado Revised Statutes § 25-7-104.

CONDENSATE

Hydrocarbon liquids that remain liquid at standard conditions (68 degrees Fahrenheit and 29.92 inches Mercury) and are formed by condensation from, or produced with, natural gas, and which have an American Petroleum Institute gravity ("API gravity") of 40 degrees or greater.

CONSTRUCTION

Except as listed or unless defined differently for a specific regulation, construction means the fabrication, erection, installation, or modification of an air pollution source. For Prevention of Significant Deterioration and New Source Review purposes, construction means any physical change or change in the method of operation (including, but not limited to, fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

CONTINUOUS MONITORING SYSTEM

A comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation.

CONTROL DEVICE (STATIONARY)

The air pollution control equipment used to remove air pollutants generated by a stationary source.

CONTROL DEVICE (MOBILE)

Air pollution control equipment used to remove air pollutants generated by mobile sources.

CRUDE OIL

Raw petroleum as it comes from the well, as pyrolyzed from kerogen, processed from tires, or recovered from other processes.

CYCLONIC FLOW

Spiraling movements of exhaust gases within a duct or stack.

DAY

A single twenty-four hour period from midnight to midnight or other twenty-four hour period as approved by the Division on a case-by-case basis.

DEPARTMENT

The Colorado Department of Public Health and Environment.

DEPARTMENT OF REVENUE

The Colorado Department of Revenue.

DESIGNATED REPRESENTATIVE

A responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of Code of Federal Regulations, Title 40, Part 72 (October 19, 2007), to represent and legally bind each owner and operator, as a matter of law, in matters pertaining to the acid rain program. Whenever the term responsible official is used, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

DIRECT PM2.5 EMISSIONS

Solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct PM2.5 emissions include elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal material, metals, and sea salt).

DIVISION

The Air Pollution Control Division of the Colorado Department of Public Health and Environment except where specifically designated as the Division of Administration of the Colorado Department of Public Health and Environment.

DUST HANDLING EQUIPMENT

Any equipment used to transport, convey, or otherwise handle particulate matter that has been collected by an air pollution control device.

EMERGENCY POWER GENERATOR

A generator whose sole function is to provide back-up power when electric power is interrupted. Periodic testing of these generators and associated control and switching systems to insure that they are properly functioning will not prevent such a generator from being designated an emergency power generator.

EMISSION

The discharge or release into the atmosphere (ambient air) of one or more air pollutants.

EMISSION CONTROL REGULATION

Any standard promulgated by regulation that is applicable to all air pollutant sources within a specified area and that prohibits or establishes permissible limits for specific types of emissions in such areas. Also any regulation that by its terms is applicable to a specified type of facility, process, or activity for the purpose of controlling the extent, degree, or nature of pollutants emitted from such type of facility, process, or activity, any regulation adopted for the purpose of minimizing or preventing the emission of any air pollutant in potentially dangerous quantities, and also any regulation that adopts any design, equipment, work practice, or operational standard. Emission control regulations shall not include standards which describe maximum ambient air concentrations of specifically identified pollutants or which describe varying degrees of pollution of ambient air. Emission control regulations pertaining to hazardous air pollutants shall be consistent with the emission standards promulgated under Section 112 of the Federal Act or Colorado Revised Statutes § 25-7-109.3 of the Colorado Act in preventing or reducing emissions of hazardous air pollutants, and may include application of measures, processes, methods, systems, or techniques, including, but not limited to, measures that:

a. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials, or other modifications;

b. Enclose systems or processes to eliminate emissions;

c. Collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;

d. Are design, equipment, or work practice standards (including requirements for operator training or certification); or

e. A combination of a. through d.

EMISSION STANDARD

See Standard of Performance.

EMISSIONS UNIT

Any part or activity of a stationary source that emits or has the potential to emit any air pollutant regulated under the state or Federal Acts. This term is not meant to alter or affect the definition of the term “unit” for purposes of Title IV (acid deposition control) of the federal act, or of the term “source” for purposes of the Air Pollutant Emission Notice requirements of Regulation Number 3, Part A, Section II.B.3.

ENFORCEABLE

Means all requirements contained in any permit issued in accordance with Regulation Number 3 and all regulatory requirements promulgated by the Commission, the state Act, consent decrees, and any requirements that are federally enforceable.

EQUIVALENT METHOD OF SAMPLING AND ANALYSIS

Any method of sampling and analysis of an air pollutant that has been demonstrated to the Division's satisfaction as having a consistent and quantitatively known relationship to a reference test method.

EXCAVATION

The removal of surface material, that may or may not be replaced, for the purpose of constructing or installing a structure or piece of equipment.

EXCESS EMISSION

Emissions of an air pollutant in excess of a performance standard promulgated by the Commission.

FEDERAL ACT

The Federal “Clean Air Act”, 42 U.S.C. Section 7401 et seq.

FEDERALLY ENFORCEABLE

Means all limitations and conditions which are enforceable by the U.S. EPA Administrator, including, but not limited to, those in the most recent edition of: (1) those requirements developed pursuant to Code of Federal Regulations Title 40, Parts 60, 61, 63, and 72; (2) requirements within any U.S. EPA-approved State Implementation Plan; (3) requirements in operating permits issued under an U.S. EPA-approved program; and (4) any requirements in permits for new or modified sources which are issued pursuant to the Code of Federal Regulations Title 40, § 52.21 or under regulations approved by the U.S. EPA pursuant to the Code of Federal Regulations Title 40, Part 51, Subpart I; except those permit requirements specifically identified as state-only enforceable requirements, or specifically incorporating Colorado regulatory requirements (other than the incorporation of federal requirements) not in the State Implementation Plan. Limitations and conditions voluntarily sought or accepted and included in operating permits or permits governing new or modified sources which are issued under regulations approved by the U.S. EPA, for the purpose of avoiding classification as a major source or major modification or of enabling a source to take advantage of the early reduction program under Section 112 of the Federal Act (1990), are also federally enforceable.

FIXED CAPITAL COST

The capital needed to provide all the depreciable components.

FOSSIL FUEL

Natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such materials.

FOSSIL FUEL AND/OR WOOD RESIDUE FIRED STEAM GENERATING UNIT

A furnace or boiler burning a fossil fuel and/or wood residue and producing steam by heat transfer.

FOUNDRY

A facility engaged in the melting or casting of metals or alloys.

FUEL BURNING EQUIPMENT

Any furnace, boiler, or other equipment and appurtenances thereto, burning fuel solely for the purpose of producing heat, but not including: (1) internal combustion engines, or (2) combustion sources that are a part of a manufacturing process where the emissions are intermixed with the process emissions.

FUGITIVE EMISSIONS

Emissions that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

GREENHOUSE GAS

Means the aggregate group of the following six greenhouse gases: carbon dioxide (CO2), nitrous oxide (N2O), methane (CH4), hydrofluorcarbons (HFCs), perfluorcarbons (PFCs), and sulfur hexafluoride (SF6). These gases are treated in aggregate based on the total carbon dioxide equivalent (CO2e) of each gas as the pollutant GHG. See definition for carbon dioxide equivalent (CO2e).

GRADING

The movement of soil for the purpose of establishing grade and drainage.

HAUL ROADS

Roads that are used for commercial, industrial or governmental hauling of materials and which the general public does not have a right to use.

HAZARDOUS AIR POLLUTANT (HAP)

An air pollutant that presents through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances that are known to be, or may reasonably be anticipated to be carcinogenic, mutagenic, teratogenic, neurotoxic, that cause reproductive dysfunction, or that are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise and that has been listed pursuant to Section 112 of the Federal Act (1990), or § 25-7-109.3 of the state Act (2022).

HIGHLY VOLATILE ORGANIC COMPOUND

A volatile organic compound or mixture of such compounds with a vapor pressure in excess of 570 torr (11 pounds per square inch absolute (psia)) at 20 degrees Celsius or 68 degrees Fahrenheit.

HIGH TERRAIN

Any area having an elevation of nine hundred feet or more above the base of the stack of the source.

HOURLY PERIOD

Any sixty-minute period.

HYDROCARBON (HC)

An organic compound consisting only of carbon and hydrogen.

INCINERATOR

Any equipment, device, or contrivance used for the destruction of solids, liquids or gaseous wastes by burning. Excludes devices commonly called wigwam waste burners used exclusively to burn wood wastes and incinerating toilet waste. Excludes devices commonly called Air Curtain Destructors used exclusively to burn 100% wood waste, clean lumber, or yard waste generated as a result of projects to reduce the risk of wildfire and is not operated at a commercial or industrial facility. Any Air Curtain Destructor subject to 40 CFR Part 60 (July 1, 2022) incinerator requirements is considered an incinerator.

INDIAN GOVERNING BODY

The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

INDIAN RESERVATION

Any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

INTERMITTENT SOURCES

Those stationary sources of air pollution that do not operate on a continuous basis for a period of time sufficient to allow for opacity observations in accordance with U. S. EPA Method 9 (2017).

ISOKINETIC SAMPLING

Sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

LEAD (PB)

Elemental lead, lead containing alloys and compounds of lead.

LOW TERRAIN

Any area other than high terrain.

MACHINE SHOP

A facility performing cutting, grinding, turning, honing, milling, debarring, lapping, electro-chemical machining, etching, or other similar operations.

MALFUNCTION

Any sudden and unavoidable failure of air pollution control equipment or process equipment or unintended failure of a process to operate in a normal or usual manner. Failures that are primarily caused by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

MANUFACTURING PROCESS OR PROCESS EQUIPMENT

An action, operation, or treatment involving chemical, industrial, or manufacturing factors, such as heat treating furnaces, or fuel-burning devices that are a part of a manufacturing process where emissions are intermixed with the process emissions, heating and reheating furnaces, sintering trains, electric furnaces, kilns, dryers, roasters, painting ovens, direct fired drying ovens, crushers, and all other methods and forms of manufacturing or processing that emit, or affect the emission of air pollutants, but not including fuel-burning equipment.

MONITORING SYSTEM

The complete set of equipment required under Regulation Number3 that is used to measure and record, if so required, those parameters specified.

MOTOR VEHICLE

Any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property and for which registration in Colorado is required for operation on public roads and highways as defined in Colorado Revised Statute § 42-1-102(58).

MOTOR VEHICLE EXHAUST GAS ANALYZER

Any instrument adopted by the Commission that is used to measure the concentrations or mass of hydrocarbons, carbon monoxide, nitrogen oxides, oxygen and carbon dioxide in motor vehicle exhaust.

NEGLIGIBLY REACTIVE VOLATILE ORGANIC COMPOUNDS (NRVOCs)

The U.S. EPA definition of volatile organic compounds located in the Code of Federal Regulations Title 40, § 51.100 (s) (November 7, 1986), referred to within these regulations as Negligibly Reactive Volatile Organic Compounds is hereby incorporated by reference by the Commission and made a part of the Colorado Air Quality Control Commission Regulations.

The list of Negligibly Reactive Volatile Organic Compounds is included for easier reference:

Methyl Acetate
Acetone
Methane
Ethane
Methylene Chloride (Dichloromethane)
1,1,1-Trichloroethane (Methylchloroform)
1,1,2-Trichloro-1,2,2-Trifluoroethane (CFC-113)

Trichlorofluoromethane (CFC-11)
Dichlorodifluoromethane (CFC-12)
Chlorodifluoromethane (HCFC-22)
Trifluoromethane (HFC-23)
1,2-Dichloro 1,1,2,2-Tetrafluoroethane (CFC-114)
Chloropentafluoroethane (CFC-115)
1,1,1-Trifluoro 2,2-Dichloroethane (HCFC-123)
1,1,1,2-Tetrafluoroethane (HCFC-134A)
1,1-Dichloro 1-Fluoroethane (HCFC 141B)
1-Chloro 1,1-Difluoroethane (HCFC-142B)
2-Chloro-1,1,1,2-Tetrafluoroethane (HCFC-124)
Pentafluoroethane (HFC-125)
1,1,2,2-Tetrafluoroethane (HFC-134)
1,1,1-Trifluoroethane (HFC-143A)
1,1-Difluoroethane (HFC-152A)
Parachlorobenzotrifluoride (PCBTF)
Cyclic, Branched, or linear completely methylated siloxanes
Perchloroethylene (Tetrachloroethylene)
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
1,3-dichloro-1.1.2.2.3-pentafluoropropane (HCFC-225cb)
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)
Difluoromethane (HFC-32)
Ethylfluoride (HFC-161)
1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
1,1, 2, 2,3-pentafluoropropane (HFC-245ca)
1,1,2,3,3-pentafluoropropane (HFC-245ea)
1,1,1,2,3-pentafluoropropane (HFC-245eb)
1,1,1,3,3-pentafluoropropane (HFC-245fa)
1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
1,1,1,3,3-pentafluorobutane (HFC-365mfc)

Chlorofluoromethane (HCFC-31)
1 chloro-1-fluoroethane (HCFC-151a)
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
1,1,1,2,2,3,3,4,4-nonfluoro-4-methoxy-butane (C4F9OCH3)
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3)
1-ethoxy-1,1,2,2,3,3,4,4,4-nonfluorobutane (C4F9OC2H5)
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OC2H5)
1,1,1,2,2,3,3,-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$, HFE-7000)
3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2(trifluoromethyl)hexane (HFE-7500)
1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea)
Methyl formate, ($HCOOCH_3$)
Tertiary Butyl Acetate
(1)1,1,1,2,2,3,4,5,5,5,-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300)
Propylene carbonate
Dimethyl carbonate
Perfluorocarbon Compounds which fall into these classes: --Cyclic Branched or Linear, Completely Fluorinated Alkanes --Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations --Cyclic, Branched, or Linear, Completely Fluorinated Tertiary amines with no unsaturations --Sulfur containing Perfluorocarbons with no Unsaturations and with Sulfur Bonds only to Carbon and Fluorine
2-amino-2-methyl-1-propanol (also known as AMP; CAS number 124-68-5)
2, 3, 3, 3-tetrafluoropropene (also known as HFO-1234yf)
trans 1-chloro-3, 3, 3-trifluoroprop-1-ene (also known as Solstice™ 1233zd(E))
HCF_2OCF_2H (also known as HFE-134)
HCF_2OCF_2 OCF_2H (also known as HFE-236cal2)
HCF_2OCF_2 CF_2 OCF_2H (also known as HFE-338pcc13)
HCF_2OCF_2 OCF_2 CF_2 OCF_2H (also known as H-Galden 1040X or H-Galden ZT 130)
trans-1, 3, 3, 3-tetrafluoropropene (also known as HFO-1234ze)

NONATTAINMENT AREA

An area within Colorado designated by the Commission and approved by the U.S. EPA under the Code of Federal Regulations Title 40, § 81.306 (November 30, 2021), in which ambient air concentrations of any designated pollutant exceed the National Ambient Air Quality Standards for that pollutant.

OPACITY

The degree to which an air pollutant obscures the view of an observer, expressed in percentage of obscuration or the degree (expressed in percent) to which transmittance of light is reduced by the air pollutant.

OVERLOT GRADING

Earth moving used in land development prior to the construction of structures, utilities, streets, highways or other prepared surfaces.

OWNER OR OPERATOR

Any person, who owns, leases, operates, controls, or supervises a stationary source.

OZONE DEPLETING COMPOUND

Any substance on the list of Class I and Class II ozone depleting compounds as defined by the Administrator of the U.S. EPA in the Code of Federal Regulations, Part 82 (October 28, 2014) and as referenced in Section 602 of the Federal Clean Air Act (1990).

PARTICULATE MATTER

Any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.

PARTICULATE MATTER EMISSIONS

All finely divided solid or liquid material emissions, other than uncombined water, emitted to the ambient air as measured by applicable reference methods or an equivalent or alternative method specified by the U.S. EPA, or by a test method specified in an approved State Implementation Plan.

PERSON

Any individual, public or private corporation, partnership, association, firm, trust estate, the state or any department, institution or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity whatsoever that is recognized by law as the subject of rights and duties.

PETROLEUM

The crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

PETROLEUM DISTILLATE

A volatile organic compound or a mixture including volatile organic compounds obtained from petroleum by a process of vaporization and condensation.

PETROLEUM REFINERY

Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants or other products through distillation, cracking, or reforming of unfinished petroleum derivatives.

PILOT PLANT

A small-scale facility first used for experimental purposes to study the feasibility of an operation prior to constructing a full-scale plant.

PM10

Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (µm) as measured by an U.S. EPA approved reference method.

PM10 EMISSIONS

Finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten micrometers (µm) emitted to the ambient air as measured by applicable referenced methods, or an equivalent or alternative method specified by the U.S. EPA, or by a test method specified in an approved State Implementation Plan.

POTENTIAL TO EMIT

The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state enforceable and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

PROCESS UNIT

A single process or piece of process equipment.

PROCESS WEIGHT

The total weight of all materials introduced into a source operation, which source causes, any discharge of air pollutants into the atmosphere. Solid fuels introduced into any specific source will be considered as part of the process weight, but liquid and gaseous fuels and combustion air, including required excess air, will not.

PROCESS WEIGHT RATE

A rate established as follows:

a. For continuous source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period; or

b. For cyclical or batch unit operations or unit processes, the total process weight for a period that covers a complete operation or an integral number of such cycles divided by the hours of actual process operation; or

c. For operations not specified, the process weights that results in a minimum value for allowable emissions.

PUBLIC ACCESS

A site to which the general public has access because entry onto such site is allowed or not prevented by natural or man-made barriers. A site shall be deemed to not be accessible to the public if entry onto the property: (a) is prevented by natural barriers (e.g., wide rivers, cliffs, vast roadless areas); or (b) has man-made barriers (e.g., fences, frequent patrolling, watch dogs); or (c) has other measures or combinations of measures that effectively prevent entry onto the property by members of the general public. Posting of "no trespassing" signs alone shall not be deemed as preventing public access. Determination of public accessibility shall be made on a site-by-site basis.

REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT)

Technology that will achieve the maximum degree of emission control that a particular source is capable of meeting and that is reasonably available considering technological and economic feasibility. It may require technology that has been applied to similar, but not necessarily identical, source categories. It is not intended that extensive research and development be conducted before a given control technology can be applied to the source. This does not preclude requiring a short-term evaluation program to permit the application of a given technology to a particular type of source.

REASONABLE FURTHER PROGRESS

Annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under the Federal Act, Section 110(a)(2)(I) (1990), and regular reductions thereafter) that are sufficient in the judgment of the Commission and the U.S. EPA to provide for attainment of the applicable National Ambient Air Quality Standards by the date required in Section 172(a) (1990) of the Federal Act.

RECONSTRUCTION

Will be presumed to have taken place where the fixed capital cost of the new components exceeds fifty percent of the fixed capital cost of an entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions in Regulation Number 6. In determining lowest achievable emission rate for a reconstructed stationary source, the provisions of Regulation Number 6 shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.

REFERENCE TEST METHOD

A method for the sampling and analysis of an air pollutant emission as designated by the U.S. EPA in the most recent edition of the Code of Federal Regulations Title 40, Part 60, Chapter 1, Appendix A, and the Code of Federal Regulations Title 40, Parts 51, 52, 61, and 63, for specific source categories and published in the Federal Register or any alternate or equivalent method approved and/or specified by the Commission or the Division and approved by the U.S. EPA.

REFINERY PROCESS UNIT

A segment of the petroleum refinery in which a specific processing operation is conducted.

REFINERY PROCESS UNIT TURNAROUND

Scheduled shutdown of a refinery process unit for the purpose of inspection or maintenance.

REID VAPOR PRESSURE (RVP)

The absolute vapor pressure of volatile crude oil and volatile non-viscous petroleum liquids except liquefied petroleum gases as determined by the appropriate American Society for Testing and Materials method.

RESIDENTIAL STRUCTURES

All buildings or other structures used primarily as a place of residence, and including both single and multi-family residential dwellings.

RESPONSIBLE OFFICIAL

One of the following:

a. For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (i) The facilities employ more than two hundred and fifty persons or have gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars); or (ii) The delegation of authority to such representative is approved in advance by the Division;

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

c. For a municipality, state, federal, or other public agency; either a principal executive officer, or ranking elected official. For the purposes of this section, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or

d. For affected sources: (i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Federal Act or the regulations, found at Code of Federal Regulations Title 40, Part 72 (March 28, 2011), promulgated there under are concerned; and (ii) The designated representative under Title IV of the Federal Act or the Code of Federal Regulations Title 40, Part 72 (March 28, 2011) for any other purposes under the Code of Federal Regulations Title 40, Part 70 (May 6, 2020).

ROADWAYS

Roads, other than haul roads, used for motorized vehicular traffic.

RUN

The net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous.

SHUTDOWN

The cessation of operation of an air pollutant source for any purpose.

SOLID WASTE

Any waste classified as Type “zero” through Type “six” as specified by the Incinerator Institute of America.

SOURCE DEFINTIONS

a. Air Pollution Source

Any source whatsoever at, from, or by reason of which there is emitted or discharged into the atmosphere any air pollutant.

b. Indirect Source

A facility, building, structure, or installation, or any combination thereof, excluding dwellings that can reasonably be expected to cause or induce substantial mobile source activity that results in emissions of air pollutants that might reasonably be expected to interfere with the attainment and maintenance of National Ambient Air Quality Standards.

c. Mobile Source

Motor vehicles and other sources of air pollution that emit pollutants while moving and that are capable of moving, and that commonly do not remain at one site (one or more contiguous or adjacent properties owned or operated by the same person or by persons under common control).

d. Stationary Source

Any building, structure, facility, equipment, or installation, or any combination thereof belonging to the same industrial grouping that emit or may emit any air pollutant subject to regulation under the Federal Act that is located on one or more contiguous or adjacent properties and that is owned or operated by the same person or by persons under common control. Those emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road engine as defined in I.B.40. of this regulation shall not be considered a stationary source. Buildings, structures, facilities, equipment, and installations shall be considered to belong to the same industrial grouping if they belong to the same major groups; i.e., have the same two-digit codes, as described in the Standard Industrial Classification Manual, 1987, but not later amendments.

See National Technical Information Service, Order No. PB 87-100012. The manual is available for examination at the office of the Director of the Air Pollution Control Division, Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado, 80246-1530.

STACK

A flue, conduit, or duct arranged to conduct an air pollutant to the ambient air. For the purposes of stack height requirements, flares will be excluded from the definition of stack.

STANDARD CONDITIONS

A gas temperature of 20 degrees Celsius or 68 degrees Fahrenheit and a gas pressure of one atmosphere (760 torr).

STANDARD OF PERFORMANCE

A regulation that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

STARTUP

Any setting in operation of an air pollutant source for any purpose.

STEEL PRODUCTION CYCLE

The operation of a basic oxygen process furnace required to produce each batch of steel and includes the following major functions: scrap charging, preheating (when used), hot metal charging, primary oxygen blowing, additional oxygen blowing (when used), and tapping.

SUBMERGED FILL PIPE

Any gasoline or petroleum distillate tank fill pipe the discharge that is entirely submerged when the liquid level is six inches above the bottom of the tank. “Submerged fill pipe” when applied to a tank that is filled from the side is defined as any fill pipe the discharge opening that is entirely submerged when the liquid level is eighteen inches above the bottom of the tank.

TERMINALS

A petroleum distillate storage and distribution facility that has an average daily throughput of more than 76,000 liters (20,000 gallons) that is loaded directly into transport vehicles.

THERMAL DRYER

A process in which the moisture content of a processed material is reduced by contact with a heated stream of air or other gases that are exhausted to the ambient air.

TOTAL SUSPENDED PARTICULATE (TSP)

Particulate matter as measured by the method described in the Code of Federal Regulations, Title 40, Part 50, Appendix B (Hi-Volume Sampler).

TRANSFER AND LOADING SYSTEM

Any equipment or processes used to transfer or load materials for storage or shipment.

UNCLASSIFIED AREA

An area within Colorado that cannot, based on available information, be classified as attainment or nonattainment.

VAPOR BALANCE SYSTEM

The connecting together of the vapor spaces of two vessels such that when liquid is dispensed from the first vessel into the second vessel, the vapor in the second vessel is displaced by the incoming liquid and forced through the connection into the first vessel. This vapor then occupies the space in the first vessel that is vacated by the dispensed liquid.

VAPOR RECOVERY SYSTEM

A vapor collection system capable of collecting substantially all the volatile vapors and gases discharged from the storage vessel and a vapor disposal system capable of processing such vapors and gases to prevent any substantial emission to the ambient air.

VOLATILE ORGANIC COMPOUND (VOC) (see also Highly Volatile Organic Compound)

Any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions, except those listed in the definition of negligibly reactive volatile organic compounds included in this regulation as having negligible photochemical reactivity. Volatile organic compounds may be measured by test methods specified in Colorado's EPA-approved State Implementation Plan, a Title V Permit, a reference method, an equivalent method, an alternative method or by procedures specified under the Code of Federal Regulations Title 40, Part 60, Title 40 Part 51, Subpart I or Appendix S, or Title 40, Part 52. Prior approval from the U.S. EPA is required in order to use an equivalent or alternative method. A reference method, an equivalent method or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the compounds listed in the definition of net emission increase when determining compliance with a standard if the amount of such compound is accurately quantified and the Division approves such exclusion. As a precondition to excluding such compounds as volatile organic compounds, or at any time thereafter, the Division may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Division, the amount of negligibly reactive compounds in the source's emissions. For the purposes of photochemical dispersion modeling, the non-criteria reportable NRVOC tertiary butyl acetate (also 2-butanone) shall be treated as a VOC.

WELFARE

As used in these regulations, effects on public welfare include, but are not limited to: effects on soils; water; crops; vegetation; manmade materials; animals; wildlife; weather; visibility; climate; damage to and deterioration of property; and hazards to transportation; as well as effects on economic values and on personal comfort and well being.

WOOD RESIDUE

Bark, sawdust, slabs, chips, shavings, mill trim, and other wood products derived from wood processing and forest management operations.

II. General

II.A. To Control Emissions Leaving Colorado

When emissions generated from sources in Colorado cross the state boundary line, such emissions shall not cause the air quality standards of the receiving state to be exceeded, provided reciprocal action is taken by the receiving state.

II.B. Emission Monitoring Requirements

The Division may require owners or operators of stationary air pollution sources to install, maintain, and use instrumentation to monitor and record emission data as a basis for periodic reports to the Division.

II.C. Performance Testing

II.C.1. The owner or operator of any air pollution source shall, upon request of the Division, conduct performance test(s) and furnish the Division a written report of the results of such test(s) in order to determine compliance with applicable emission control regulations.

II.C.2. Performance test(s) shall be conducted and the data reduced in accordance with the applicable reference test methods unless the Division:

II.C.2.a. Specifies or approves, in specific cases, the use of a test method with minor changes in methodology;

II.C.2.b. Approves the use of an equivalent method;

II.C.2.c. Approves the use of an alternative method, the results of which the Division has determined to be adequate for indicating where a specific source is in compliance; or

II.C.2.d. Waives the requirement for performance test(s) because the owner or operator of a source has demonstrated by other means to the Division's satisfaction that the affected facility complies with the standard. Nothing in this paragraph shall be construed to abrogate the Commission or Division's authority to require testing under the Colorado Revised Statutes, Title 25, Article 7, and pursuant to regulations promulgated by the Commission.

II.C.3. Compliance test(s) shall be conducted under such conditions, as the Division shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the Division such records as may be necessary to determine the conditions of the performance test(s). Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions of performance test(s) unless otherwise specified in the applicable standard.

II.C.4. The owner or operator of an affected facility shall provide the Division thirty days' prior notice of the performance test to afford the Division the opportunity to have an observer present. The Division may waive the thirty-day notice requirement if arrangements satisfactory to the Division are made for earlier testing.

II.C.5. The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

II.C.5.a. Sampling ports adequate for test methods applicable to such facility;

II.C.5.b. Safe sampling platform(s);

II.C.5.c. Safe access to sampling platform(s); and

II.C.5.d. Utilities for sampling and testing equipment.

II.C.6. Each performance test shall consist of at least three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For determining compliance with an applicable standard, the arithmetic mean of results of at least three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Division's approval, be determined using the arithmetic mean of the results of the two other runs.

II.C.7. Nothing in this section shall abrogate the Division's authority to conduct its own performance test(s) if so warranted.

II.D. Ambient Air Monitoring Requirements (Reserved)

II.E. (State Only as of June 1, 2024) Affirmative Defense Provision for Excess Emissions During Malfunctions

II.E.1. An affirmative defense to a claim of violation under these regulations is provided to owners and operators for civil penalty actions for excess emissions during periods of malfunction. To establish the affirmative defense and to be relieved of a civil penalty in any action to enforce an applicable requirement, the owner or operator of the facility must meet the notification requirements of II.E.2. in a timely manner and prove by a preponderance of evidence that:

II.E.1.a. The excess emissions were caused by a sudden, unavoidable breakdown of equipment, or a sudden, unavoidable failure of a process to operate in the normal or usual manner, beyond the reasonable control of the owner or operator;

II.E.1.b. The excess emissions did not stem from any activity or event that could have reasonably been foreseen and avoided, or planned for, and could not have been avoided by better operation and maintenance practices;

II.E.1.c. Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded.

II.E.1.d. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

II.E.1.e. All Reasonably possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

II.E.1.f. All emissions monitoring systems were kept in operation (if at all possible);

II.E.1.g. The owner or operator’s actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs or other relevant evidence;

II.E.1.h. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

II.E.1.i. At all times, the facility was operated in a manner consistent with good practices for minimizing emissions. This II.E.1.i. is intended solely to be a factor in determining whether an affirmative defense is available to an owner or operator, and does not constitute an additional applicable requirement; and

II.E.1.j. During the period of excess emissions, there were no exceedances of the relevant ambient air quality standards established in the Commissions' Regulations that could be attributed to the emitting source.

II.E.2. Notification

The owner or operator of the facility experiencing excess emissions during a malfunction must notify the Division verbally as soon as possible, but no later than noon of the Division's next working day, and must submit written notification following the initial occurrence of the excess emissions by the end of the source's next reporting period. The notification must address the criteria set forth in II.E.1.

II.E.3. The Affirmative Defense Provision contained in this II.E. is not available to claims for injunctive relief.

II.E.4. The Affirmative Defense Provision does not apply to failures to meet federally promulgated performance standards or emission limits, including, but not limited to, new source performance standards and national emission standards for hazardous air pollutants. The affirmative defense provision does not apply to state implementation plan (sip) limits or permit limits that have been set taking into account potential emissions during malfunctions, including, but not necessarily limited to, certain limits with 30-day or longer averaging times, limits that indicate they apply during malfunctions, and limits that indicate they apply at all times or without exception.

II.F. Circumvention Clause

A person shall not build, erect, install, or use any article, machine, equipment, condition, or any contrivance, the use of which, without resulting in a reduction in the total release of air pollutants to the atmosphere, reduces or conceals an emission that would otherwise constitute a violation of this regulation. No person shall circumvent this regulation by using more openings than is considered normal practice by the industry or activity in question.

II.G. Conflicts

Nothing in these regulations is intended to permit any practice that is a violation of any statute, ordinance or regulation.

II.H. Severability Clause

If any regulation, section, clause, phrase, or standard contained in these regulations shall for any reason be held to be inoperative, unconstitutional, void, or invalid, the validity of the remaining portions thereof shall not be affected thereby and the Commission does hereby declare that it severally passed and adopted the provisions contained therein separately and apart from the other provisions thereof.

II.I. Compliance Certifications

For the purpose of submitting compliance certifications or establishing whether a person has violated or is in violation of any standard in the Colorado State Implementation Plan, nothing in the Colorado State Implementation Plan shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed. Evidence that has the effect of making any relevant standard or permit term more stringent shall not be credible for proving a violation of the standard or permit term.

When compliance or non-compliance is demonstrated by a test or procedure provided by permit or other applicable requirement, the owner or operator shall be presumed to be in compliance or non-compliance unless other relevant credible evidence overcomes that presumption.

II.J. (State Only as of June 1, 2024) Affirmative Defense Provision for Excess Emissions During Startup and Shutdown

II.J.1. An affirmative defense is provided to owners and operators for civil penalty actions for excess emissions during periods of startup and shutdown. To establish the affirmative defense and to be relieved of a civil penalty in any action to enforce an applicable requirement, the owner or operator of the facility must meet the notification requirements of paragraph 2 in a timely manner and prove by a preponderance of the evidence that:

II.J.1.a. The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design;

II.J.1.b. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance;

II.J.1.c. If the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

II.J.1.d. The frequency and duration of operation in startup and shutdown periods were minimized to the maximum extent practicable;

II.J.1.e. All possible steps were taken to minimize the impact of excess emissions on ambient air quality;

II.J.1.f. All emissions monitoring systems were kept in operation (if at all possible);

II.J.1.g. The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs or other relevant evidence; and,

II.J.1.h. At all times, the facility was operated in a manner consistent with good practices for minimizing emissions. This subparagraph h., is intended solely to be a factor in determining whether an affirmative defense is available to an owner or operator, and does not constitute an additional applicable requirement.

II.J.2. Notification: The owner or operator of the facility experiencing excess emissions during startup and shutdown must notify the Division verbally as soon as possible, but no later than two (2) hours after the start of the next working day, and must submit written quarterly notification following the initial occurrence of the excess emissions. The notification must address the criteria set forth in Section II.J.1.

II.J.3. The Affirmative Defense Provision contained in this section is not available to claims for injunctive relief.

II.J.4. The Affirmative Defense Provision does not apply to State Implementation Plan provisions or other requirements that derive from new source performance standards or national emissions standards for hazardous air pollutants, or any other federally enforceable performance standard or emission limit with an averaging time greater than twenty-four hours. In addition, an affirmative defense cannot be used by a single source or small group of sources where the excess emissions have the potential to cause an exceedance of the ambient air quality standards or Prevention of Significant Deterioration (PSD) increments.

II.J.5. Affirmative Defense Determination: In making any determination whether a source established an affirmative defense, the Division shall consider the information within the notification required in II.J.2. and any other information the Division deems necessary, which may include, but is not limited to, physical inspection of the facility and review of documentation pertaining to the maintenance and operation of process and air pollution control equipment.

III. (State Only) Civil Penalties

III.A.

As specified in Colorado Revised Statutes (CRS), § 25-7-122 (July 2, 2020), any person who violates any requirement or prohibition of an applicable emission control regulation of the Commission; the state implementation plan; a construction permit; an operating permit, including failure to obtain a permit, to operate in compliance with any term or condition of the permit, or to pay any permitting fees; commits a violation of the accidental release prevention program; any provision for the prevention of significant deterioration under CRS, § 25-7-201 et seq.; any provision related to attainment under CRS, § 25-7-301 et seq.; or any provision of CRS, §§ 25-7-105, 25-7-106, 25-7-106.3, 25-7-108, 25-7-109, 25-7-111, 25-7-112,25-7-113, 25-7-114.2, 25-7-114.5, 25-7-118, 25-7-206, 25-7-403, 25-7-404, 25-7-405, 25-7-407, 42-4-403, 42-4-404, 42-4-405, 42-4-406, 42-4-407, 42-4-409, 42-4-410, or 42-4-414 may be subject to a civil penalty of not more than forty-seven thousand three hundred fifty-seven dollars per day for each day of the violation.

III.B. Annual adjustment

III.B.1. Beginning in 2021, the Commission shall, by rule, annually adjust the amount of the maximum civil penalty based on the percentage change in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for all items and all urban consumers (CPI), or its successor index.

III.B.2. The annual adjustment is based on the percentage by which the CPI for July of the current year exceeds the CPI for July of the previous year.

III.B.3. Based on the percentage change in the CPI from year to year, the maximum civil penalty per day for each day of the violation and effective date are specified in Table 1.

Table 1 – Maximum civil penalty				
Date	CPI	Change in CPI	Maximum Civil Penalty	Penalty Effective Date
July 2020	275.589	Not applicable	$47,357	July 2, 2020
July 2021	285.268	3.512%	$49,020	January 1, 2022
July 2022	308.728	8.224%	$53,051	February 14, 2023
July 2023	323.298	4.719%	$55,554	January 1, 2024

IV. Reserved

V. Statements of Basis, Specific Statutory Authority and Purpose

V.A. Adopted December 14, 1978 - Definitions

Rationale and Justification for Revisions to the Common Provisions Regulation

The principal reason for revising the Common Provisions Regulation is the need for the addition of certain definitions required by the revisions of the other regulations. Opportunity was taken at the same time to revise some definitions in an effort to add clarity. Few changes were made in I., even though some questions were raised regarding I.D. - Intent.

Consideration was given to the suggestions of the Division and the Parties to the hearing with respect to the definitions. In some instances, the original definitions were retained; in others, they were modified. For example: (1) the original definition of “air contaminant” was retained; the Union Oil suggestion was far less precise; (2) the Public Service Company definition of “air contaminant source - new source,” replaces the original version; (3) for “steel production cycle,” the CF&I version was adopted. Generally, the Commission worked through the original definitions and the various suggestions for change and finally adopted those versions they concluded were best in terms of clarity and intent. Considerable attention was paid to the definition of “modification” and a version selected which would encourage existing sources within the state to install new pollution control equipment even though a slight increase in emissions of sulfur dioxide would result if these increases (a) occurred in a sulfur dioxide attainment area, and (b) if the existing source sulfur dioxide standard would be met.

The notification period prior to performance testing was shortened to 30 days with the provision the Division could waive this interval if it so decided. The CF&I request for exemption of sources emitting less than 100 tons per year from performance testing was rejected in that no means would exist to detect violations of the emission standard without such testing.

Rationale and Justification Addition to Common Provisions Conflict of Interest

The purpose of this regulatory addition is to set forth standards of conduct as it relates to conflict of interest in the course of operation of both the Colorado Air Pollution Control Commission and the Colorado Air Pollution Variance Board. This regulation essentially establishes in written form that which has been the practice of the Commission and the Variance Board during the course of hearings conducted by the respective bodies.

This regulation will also bring Colorado into compliance with Section 128 of the Clean Air Act, which requires that "any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed." The Clean Air Act also provides that a state may adopt requirements respecting conflicts of interest for such boards or bodies, which are more restrictive than the requirements of the Act.

The Commission believes this regulation satisfies both the requirements of the Federal Act and the State Administrative Procedures Act as well as setting forth expected standards of conduct.

V.B. Adopted June 5, 1980 — Abbreviations and Definitions

Rationale and Justification for the Repeal and Repromulgation of Regulation Number 3 and Common Provisions Regulation as Related to Regulation Number 3

On December 14, 1978, the Air Quality Control Commission revised Regulation Number 3 (concerning requirements for filing air pollution emission notices, obtaining emission permits, and payment of fees with respect to both) for the primary purpose of bringing Colorado's air pollutant emission permit program into conformity with the requirements of the Federal Clean Air Act Amendments of 1977 to the extent authorized by the then effective state statutory authority: "The Air Pollution Control Act of 1970," C.R.S. 1973, 25-7-101 et seq. The regulation as revised in 1978 and which became effective January 30, 1979, was submitted to the U.S. EPA as a revision to the State Implementation Plan ("SIP") pursuant to Subsection 129(c) of the Federal Clean Air Act Amendments of 1977.

Since that submittal, the Colorado General Assembly has repealed and reenacted the state's basic air pollution control statute: Article 7 of Title 25, Colorado Revised Statutes, 1973, The new article, known as the "Colorado Air Quality Control Act" (designated House Bill 1109 in the 1979 Legislative session), became effective June 20, 1979, and largely brought the state statute into conformity with the Federal legislation, mandating the Commission to develop a comprehensive air pollution control program meeting the requirements of the Federal Clean Air Act.

The primary purpose of this current revision of Regulation Number 3 is to implement the new provisions of HB 1109 and to further bring the permit aspects of the Colorado air pollution control program into compliance with the requirements of the Federal Clean Air Act.

Revisions also respond to the requirements set forth in the October 5, 1979 Federal Register notice which conditionally approved portions of the Colorado SIP and set forth certain requirements for securing their unconditional approval. E.g., see Section IV.D.2.a.(iv) of revised Regulation Number 3 which incorporates the requirements of Section 172(b)(11)(A) of the Clean Air Act. 44 Fed. Reg. 57401, 57408 (1979).

The Commission has made an effort to formulate a permit program meeting the requirement of and paralleling of the provisions of EPA policies and rules to the extent authorized by House Bill 1109 and to the extent deemed appropriate by the Commission for Colorado's particular circumstances. This has been done in order to meet certain specific requirements expressly set forth in the Federal Clean Air Act, to meet certain specific requirements EPA has determined are required for compliance with the Federal Act, and to avoid subjecting sources of air pollution in Colorado to differing State and Federal requirements. The Commission considered the assurance of reasonable further progress toward attainment of National Ambient Air Quality Standards as the primary underlying criterion in developing permit requirements for sources located in or near nonattainment areas.

Consideration has also been given to the opinion of the United States Court of Appeals for the District of Columbia in the case of Alabama Power Company v. Costle ___ F.2d __ D.C. Cir., (1979).

APENs

In order to reduce the administrative burden on both the Air Pollution Control Division ("the Division") and owners and operators of air pollution sources, the filing of revised air pollution emission notices for the purpose of reporting significant changes in emissions will be required only on an annual basis, rather than whenever a significant change in emissions occurs. In making this revision, the Commission relied on the representations of the Division that annual reporting would be sufficient for purposes of keeping the emissions inventory current.

Street Sanding

With the exception of street sanding (and indirect sources), the exemptions provided in the revised regulation from the APEN-filing and emission permit requirements are for minor or insignificant sources of emissions.

Although not finding that particulate emissions resulting from the application and reentrainment of "sand" applied to snow or ice covered roadways as a traffic safety measure are insignificant, the Commission has exempted sanding from the APEN-filing and permit requirements out of administrative necessity.

Little benefit can be obtained from the filing of APENs in light of the fact that the amount of emissions cannot be predicted with any reasonable accuracy due to varying factors such as weather. APENs would therefore serve little purpose as notices of expected emissions.

It is the judgment of the Commission that protection of persons and property by sanding snow and ice covered roadways is an overriding consideration and that the costs of not taking such safety measures would far outweigh any air quality benefits resulting from requiring permits for sanding. Sanding should not therefore be prohibited — even without a permit. The only reason for imposing a permit requirement would be to facilitate enforcement of control measures to limit emissions which the Commission believes may be accomplished without a permit requirement through emission control regulations and provisions in local elements of the State Implementation Plan.

Major Sources, Major Modifications, and the "Bubble" Concept

The Commission has retained requirements that new "major sources" locating in nonattainment areas and "major modifications" to existing sources in nonattainment areas meet special requirements (Offsets, LAER, etc.) designed to allow the continued development in such areas without interfering with reasonable further progress toward attainment of National Ambient Air Quality Standards. The criteria for determining when a new source or modification to an existing source is "major" however, have been extensively revised.

Prior to the U.S. Court of Appeals Decision in Alabama Power Company v. Costle, EPA had defined "potential to emit" — a key phrase in the definition of "major emitting facility" — in terms of uncontrolled emissions. The court however, interpreted the phrase "potential to emit" as used in the definition of "major emitting facility" in Section 169(1) of the Clean Air Act as taking "into account the anticipated functioning of the air pollution control equipment designed into the facility," thereby drastically reducing the number of sources qualifying as major. In response to this decision, on September 5, 1979, EPA proposed amendments to its regulations concerning requirements for SIPs including those pertaining to Prevention of Significant Deterioration of air quality ("PSD") and new source review in nonattainment areas, as well as EPA's Emission Offset Interpretative Ruling. 44 Fed. Reg. 51924 (1979). The Commission in reviewing Regulation Number 3 and the Common Provisions Regulation has incorporated many of the amendments adopted by EPA in its regulations including classifications of sources as major or minor based on controlled emissions.

The court in Alabama Power Company struck down the EPA regulation definition of "major modification" which definition required the imposition of the special nonattainment area requirements (Offsets, LAER, etc.) on sources when modifications resulted in an increase in emissions of criteria pollutants of 100 tons per year or more (for certain listed categories of sources; 250 tons or more for sources not listed). The court held that the special nonattainment requirements applied to all modifications of major emitting facilities except those resulting in only - "de minimus" increases in emissions. The court stated, however, that it would be permissible to look at the net increase in potential emissions from a major source in determining whether Offsets, LAER, etc., will be required.

In its proposed rules, EPA has adopted the "net increase" or "bubble" approach which generally allows a major source undergoing modification to avoid permit review as a major modification by allowing emission reductions elsewhere at the source to offset any increases resulting from the proposed modification. The Commission has adopted the "bubble" concept and many of EPA's specific regulatory provisions with respect to the concept as applied to modifications.

The court in Alabama Power Company also held that fugitive emissions could be included in determining whether a source is "major" only to the extent such emissions were expressly determined to be included by rule of the EPA administrator. In response, EPA has proposed a regulatory definition of "potential to emit" by which fugitive emissions from twenty-seven (27) listed sources would be included in determinations of which new sources and modifications are major. 44 Fed. Reg. 51956, 51958 (1979). In recognition of the fact that such emissions would be included in a determination of whether a source or modification was major if they were emitted through a stack (as opposed to being "fugitive"), recognizing that generally emissions from the twenty-seven (27) listed source categories contribute to hazards to public health and welfare, and to be consistent with the Federal scheme, the Commission has also decided to consider fugitive emissions from the twenty-seven source categories in major source/major modification determinations to the extent they are quantifiable. An owner or operator may avoid the inclusion of fugitive emissions of particulate matter by demonstrating that such emissions are of a size and substance, which do not adversely affect public health or welfare.

Banking

C.R.S. 1973, 25-7-304 requires the attainment program to provide that emission reduction offsets exceeding those required for the granting of a permit "may be preserved for sale or use in the future." Section V. of Regulation Number 3 establishes an administrative framework and the basic requirements for such a procedure consistent with the "banking" provisions established by EPA in its Emission Offset interpretative ruling, 44 Fed Reg. 3274, 3280, 3285 (January 16, 1979) (to be codified as Appendix S to 40 C.R.S. Part 51).

Extended "Debugging" Period

Pursuant to C.R.S. 1973, 25-7-114(4)(j), the Division may grant the owner or operator of a new source up to six months after commencement of operation in which to demonstrate compliance with all terms and conditions of its emission permit. The Commission determined, however, that under certain circumstances it would be appropriate to allow a source employing innovative control technology additional time in which to bring the operation of the source into full compliance. Therefore, pursuant to its authority under C.R.S. 1973, 25-7-109(5), the Commission has provided in paragraph IV.H.6. of Regulation Number 3 for such temporary relief from controls under specified limited circumstances. The provision is intended for very limited application.

PSD

Regulation Number 3 does not address the subject of special permits for major sources locating in attainment areas to insure Prevention of Significant Deterioration of air quality. The Commission decided to wait until EPA's PSD regulations have been finalized before attempting to promulgate State regulations to establish a fully State-operated program. State emission permits are nonetheless still required for sources locating in attainment areas.

Common Provisions Regulation

In connection with the revision of Regulation Number 3, the Commission concurrently made limited, related revisions in its Common Provisions Regulation. Sections I.B. and I.C. of that regulation have been changed to reflect the renumbering of the sections in the State statute authorizing the Commission to promulgate regulations and to reflect the amended language in the declaration of legislative intent.

Section I.F. of the regulation was amended to add new abbreviations used in revised Regulation Number 3 and Section I.G. (definitions) was amended to delete, revise, and add terms and their definitions to reflect changes in the terminology used in Regulation Number 3.

V.C. Adopted May 13, 1982 - Public Comment

Statement of Basis and Purpose Concerning May 13, 1982 Amendment to Section IV.C. (Public Comment) for Small Sources Locating in Nonattainment Areas

The rationale for this proposed revision is based on the underlying purpose of public comment: to obtain public input on proposed sources that the Air Pollution Control Division (APCD) can use in considering whether a permit should be granted.

Under the previous regulation, all sources locating in nonattainment areas were subject to the public comment requirement unless the APCD exercised its discretion under Section IV.C.3. (sources of less than 6 month's duration) to exempt them. APCD experience has shown that there are four categories of small sources that frequently locate in nonattainment areas, but which did not stimulate comment from the public. These categories are: (1) service stations; (2) restaurants; (3) land development (houses and commercial); and (4) other small sources (such as concrete batch plants). Basically, all the effort put into preparation of public comment packages for these sources can now be used more efficiently and the associated expense to industry saved.

The limit of 5 Tons Per Year (TPY) of controlled annual emissions is based on calculations that show most of the sources in these four categories emit less than 5 TPY of any one pollutant. Service stations, for example, generally emit 1 to 2 TPY. In many cases, less than 1 TPY is emitted.

Under the revised regulation, sources less than 5 TPY can still be subject to public comment if the Division determines it appropriate based on criteria set forth in the regulation. The difference is that the APCD would have discretion to decide instead of being required to provide public notice. Controversial sources such as gravel pits, odor sources and landfill operations are subjected to public comment by the APCD regardless of the level of emissions. This practice will continue in effect.

V.D. Adopted March 10, 1983 - Prevention of Significant Deterioration

Statement of Basis and Purpose for the Prevention of Significant Deterioration Program Regulations

This Statement of Basis and Purpose for the Prevention of Significant Deterioration (PSD) Program Regulations complies with the State Administrative Procedure Act, CRS 1973, 24-4-103(4). The statutory authority for the PSD regulations are in the Air Quality Control Act at CRS 1973, 25-7-102, 25-7-105, 25-7-106, 25-7-108, 25-7-109, 25-7-114, 25-7-116, 25-7-201 et seq. The general purpose of these regulations is to prevent the significant deterioration of air quality in those sections of the state, which has attained the national ambient air quality standards. The parties to this rulemaking include:

> Colorado Association of Commerce and Industry; Rocky Mountain Oil amp; Gas Association, Inc.; Chevron Shale Oil Company; Union Oil Company of California; Colorado Ute Electric Association, Inc.; The Colorado Mountain Club; COAL; Public Service Company of Colorado; City of Colorado Springs; CF&I Steel; Environmental Defense Fund, Inc.; United States Department of the Interior; and United States Department of Agriculture.

The Air Pollution Control Division acted as staff for and advised the Commission during the proceeding. See CRS 1973, 25-7-111(2)(g).

The PSD regulations adopted by the Commission are in many respects identical to the U.S. EPA PSD regulations. See 40 CFR 51.24 et seq.; 40 CFR 52.21 et seq. The primary reason for this is that the State Act requires that the State PSD program be in accordance with the federal Clean Air Act PSD provisions. See CRS 1973, 25-7-203. Thus, federal PSD requirements are generally a minimum for the State PSD Program. For these reasons, to the extent that the federal PSD rules are identical or substantially identical to the state regulations, the Commission incorporates herein the EPA statements of basis and purpose for the federal PSD rules at 43 Fed. Reg. 26380 et seq. (June 19, 1978) and 45 Fed. Reg. 52676 et seq. (August 7, 1980).

The Commission has additional authorities to prevent significant deterioration of air quality. In several important areas the Commission has tailored these regulations to meet the concerns of Colorado citizens. These areas include the requirement for an impact analysis on water to determine acid deposition effects, the authority to make independent determinations on adverse impact to visibility in Class I areas if the federal land manager fails to fulfill his responsibility to do so, the requirement to establish baselines for, and to monitor air quality related values in, Class I areas to determine the effects of emissions on such values, and the application of Class I sulfur dioxide increments to several Class II primitive areas and national monuments.

The proposed PSD regulations included several provisions reflecting the terms of a settlement agreement in the matter of Chemical Manufacturer's Association, et al. v. EPA in which EPA has agreed to propose amendments to its PSD rules. The Commission has rejected the adoption of such provisions for several reasons. They are arguably less stringent than current EPA rules in that they would appear to permit more air pollution. Because they may be less stringent, their adoption appeared likely on the basis of EPA testimony to impede the approval of the state PSD program by EPA at this time. Finally, EPA's schedule for consideration of such provisions is unknown. Subsequent to EPA action on the provisions of the settlement agreement, the Commission will reconsider those provisions.

The PSD regulations will generally not become applicable to major sources or major modifications in Colorado until EPA has approved them. See CRS 1973, 25-7-210. However, the regulations pertaining to attainment area designations and the enforcement of Class I sulfur dioxide increments in those areas listed in CRS 1973, 25-7-209 will be applicable upon the effective date of these regulations. These regulations will be effective twenty (20) days from publication in the Colorado Register.

DEFINITION OF "ACTUAL EMISSIONS"

The definition adopted is essentially identical to the EPA definition.

One party proposed that reference should be made to consideration of control efficiency. The Commission did not adopt this proposal because the definition inferentially considers control equipment efficiency and the reference requested would create confusion, when actual test data were available, as to whether a separate "efficiency" factor was to be applied.

Another party, in commenting on the definition of "baseline concentration," expressed concern that the determination of "actual emissions" could take place, for example, during a low-demand period for a power plant. Such determination would result in an emission rate considerably less than the full-capacity allowable emission rate, resulting in a low baseline concentration. The power plant, operating the next year at full capacity, could consume all or most of the available increment, prohibiting growth in the area. The Commission recognizes that, for certain sources such as power plants (i.e., fossil fuel-fired steam generators), the source must respond to constantly changing demands with significant changes in emissions from year to year. Therefore, for fossil fuel-fired steam generators, "allowable emissions" should generally be considered "representative of normal unit operation" rather than actual emissions in determinations of "actual emissions" for determining baseline concentration and increment consumption, unless it is clearly demonstrated that a lower level of emissions will never be exceeded.

DEFINITION OF "BASELINE AREA" AND "BASELINE DATE"

"Baseline area" is not specifically defined in the State Act but is simply referred to as "an area subject to this article" in the definition of baseline concentration. CRS 1973, 25-7-202. The Federal Clean Air Act definition of "baseline concentration," Section 169(4), is identical to the states, and EPA has interpreted" an area subject to this article" to mean the attainment and unclassifiable areas designated pursuant to Section 107(d)(1)(D) or (E) of the Federal Clean Air Act. Such an interpretation is also reasonable under the Colorado Air Quality Control Act which states that the Commission shall adopt measures "to prevent significant deterioration of ambient air quality in each region, or portion thereof, of the state identified pursuant to Section 107(d)(1)(D) or (E) of the Federal Act." The result of EPA's definition is that the entire state is the baseline area for SO_2, and air quality control regions for particulate matter. Several parties proposed alternative approaches to the definition of baseline area. These approaches ranged from a modeled 1 $\mu g/m^3$ impact area (based on 7.5 minute quadrangles, the county-township-range-section system, or a metric grid) to the entire state.

The Commission adopted the EPA definition for the following reasons:

(1) The EPA approach has been in effect for several years and has proven workable. EPA has well-developed procedures for performing source impact analyses in large baseline areas which the state can use. Changing the definition of baseline area would result in use of an approach that has not been proven and that would cause a discontinuity for the regulated industries when the PSD program is delegated to the state.

(2) The use of areas larger than the source impact area means that baseline concentrations will be determined at an earlier date, and increments will be consumed from an earlier date, thus minimizing air quality deterioration. This fulfills the primary purpose of the State Act. See CRS 1973, 25-7-102. Certain parties were concerned that baseline areas larger than the impact area might unnecessarily inhibit economic growth in the unaffected portion of the baseline area, but should that occur, and there are no specific examples in the record of where that would occur, the Commission could consider subdividing baseline areas to allow for a new baseline date and concentration. Testimony from Pitkin County and members of the general public indicated concern that with small baseline areas, minor source emission increases would continue to raise the background ambient air concentrations, especially for particulate matter, before a major source would locate in an area to begin the counting of increment consumption.

The baseline areas selected by the Commission for particulate matter represent a balance between a recognition that particulate matter emissions are often a more localized problem than are gaseous emissions (hence the use of AQCRs for particulate matter instead of the entire state, as is the approach for SO_2) and the need to begin counting increment consumption expeditiously (hence, the use of AQCRs for particulate matter rather than the smaller impact area). Only two AQCRs in Colorado have been triggered during the six years PSD has been in effect. Since triggered baseline areas can in the future be subdivided into triggered and untriggered areas, the Commission considers the use of baseline areas the size of AQCRs sufficiently flexible for purposes of reasonable application, economic growth, and prevention of air quality deterioration.

(3) Use of a baseline area equivalent to the 1 $\mu g/m^3$ impact area could result in a situation where impacts on a Class I area individually were each less than 1 $\mu g/m^3$, with the result that the Class I area would not be a part of a baseline area. Yet the cumulative impact of these sources could be greater than the 1 $\mu g/m^3$ increment for particulate matter for Class I areas, so that deterioration of air quality greater than that allowed by the regulation could legally occur.

(4) The use of the entire state as an SO_2 baseline area provides maximum protection for all Class I areas in the state. This is of particular concern to the Commission, since the general flow of air from west to east and the long-range transport of gaseous pollutants can result in effects on nearly all of Colorado's Class I areas by SO_2 sources on the West Slope. The effects and extent of acid deposition, to which SO_2 is a major contributor, was a topic of extensive testimony at the hearings; the definition of the entire state as a baseline area for SO_2 affords maximum protection of the environment while the problem of acid deposition receives additional study.

DEFINITION OF “BASELINE CONCENTRATION”

Two parties proposed changes to this definition, both suggesting the substitution of “allowable” for “actual” emissions in portions of the definition. The concern regarding power plant actual versus allowable emissions is discussed under “Actual Emissions”.

The other concern arises from the possibility of a large difference between actual and allowable emissions in the calculation of increment consumption or in establishing baseline concentrations. This is discussed extensively in the EPA preamble to the August 7, 1980 PSD regulations (Division Exhibit B, pp. 74-76) concerning increment consumption. EPA's rationale is that actual emissions more reasonably represent actual air quality than allowable emissions and that because actual emissions are based on at least two years of operation, future emissions could be reasonably expected to remain at the same level. EPA therefore uses actual emissions to avoid “paper consumption” of increment (or modeled baseline concentrations which would exceed monitored levels) The Commission concurs with the EPA rationale and has adopted the EPA approach of using actual emissions to track increment consumption and determine baseline concentrations.

DEFINITION OF “COMPLETE”

The Environmental Defense Fund (EDF) proposed a list of specific elements of a PSD permit application, for aid in determining whether an application is “complete,” which was generally incorporated in the final rule. The proposed list of items would add some certainty and clarification for the applicant and the Division of the specific items required to demonstrate completeness of an application. Regarding items (i) and (iii)-(iv), opposition to the list by several parties was primarily that it was redundant with other requirements of the rules. York, Nov. 10 Tr. at 18 et seq. and 60 et seq. Item (ii) was retained because, for many or most applications, such information would be necessary to verify the applicant's modeling.

DEFINITION OF “NET EMISSIONS INCREASE”

Several parties proposed crediting increases or decreases in emissions that occur up to five years after a modification becomes operational. The Commission did not adopt this recommendation because EPA specifically prohibits states from crediting decreases, which would occur after the change occurs. 40 CFR 51.24(b)(3). In addition, it would prove difficult to exact an enforceable agreement for a source to close down or otherwise decrease emissions at some future date.

Several parties proposed in paragraph f(ii) to shift “enforceable” from time of construction to time of operation. This change would not be consistent with the state statutory requirements, which prohibit construction or operation of a non-permitted new source or modification. The suggested change would also needlessly complicate the correlation of permits to enforceable decreases in emissions. In response to a party comment that 90 days to report a reduction in emissions is too short, the Commission agreed and has allowed such reports to be made within a year of the decrease unless an extension is granted. A longer time would make the reduction difficult to verify.

DEFINITION OF “SECONDARY EMISSIONS”

The final definition incorporates a recent amendment by EPA, 47 Fed. Reg. 27554 (June 25, 1982) and is consistent with CRS 1973, 25-7-202(6.5).

DEFINITION OF “ALLOWABLE EMISSIONS”

In several sections of EPA's PSD rules, including its definition of “allowable emissions,” EPA grants credit for permit conditions only if they are “federally enforceable.” In each of such sections, the Commission has deleted the qualification of “federally” and has in the Common Provisions Regulation defined “enforceable” so that it is consistent with EPA's definition of “federally enforceable.”

DEFINITION OF “SIGNIFICANT”

Several parties commented that the proposed definition, which defined both “significant” and “significantly” and included a listing of “significant concentrations,” was confusing and unnecessary. The proposed definition also gave the Division the discretion to (1) determine that certain sources were not significant even if the source met the definition, and (2) to determine significance levels for non-listed pollutants. In addition, it limited the definition for sources affecting Class I areas to those sources producing a “significant” impact. There were several sections in the proposed regulations that used the “significant” definition of ambient concentrations to allow impacts to Class I areas not allowed under EPA rules. EPA and the National Park Service commented that these changes resulted in a less stringent definition. The Commission agreed with these comments. The final definition is essentially identical to EPA's and uses only emission rates to define “significant,” and the use of “significant” to qualify impacts to Class I areas in other sections of the rules has been deleted.

DEFINITION OF “MODIFICATION”

One party proposed that an existing exception for increases in SO_2 emissions caused by adding new emission control equipment (e.g., replacing scrubbers with fabric filters) be retained. The Commission acknowledges that this exemption was intended to avoid penalizing a source willing to improve particulate matter collection by converting from scrubbers to baghouses or electrostatic precipitators. Since scrubbers collect gaseous pollutants, but baghouses and precipitators do not, the amount of SO_2 emitted would increase, hence the exemption. Since there are a number of nonattainment areas for particulate matter, but none for SO_2, the Commission will continue to encourage additional control of particulate matter by including this exemption in the definition of “modification.”

It should, however, be noted that this exemption is not included in the definition of "major modification," so a significant increase in SO_2 emissions from a major source will result in PSD applicability. The effect of this is to provide the exemption only for minor sources and minor modifications.

DEFINITION OF "STATIONARY SOURCE"

The proposed definition was revised to include language essentially identical to that of EPA at 40 CFR 51.24(b)(5) and (b)(6). The final rule allows more discretion to define stationary source on a case-by-case basis. The definition clarifies that a source in a nonattainment area may also be "an identifiable piece of process equipment" which makes it consistent with a recent federal case. See Natural Resources Defense Council et al. v. Gorsuch, et al., 685 F.2d 718 (D.C. Cir. 1982).

DEFINITION OF "FUGITIVE DUST"

The State Act exempts "fugitive dust" from regulation under the PSD program, including exemption from determinations of whether a source or modification is major and of increment consumption. C.R.S. 1973, 25-7-202(4), -202(5), -204(1)(b), and -204(2)(c). "Fugitive Dust" is defined as:

> Soil or other airborne particulate matter (excluding particulates produced directly during combustion) resulting from natural forces or from surface use or disturbance, including, but not limited to, all dust from wind erosion of exposed surfaces or storage piles and from agriculture, construction, forestry, unpaved roads, mining, exploration, or similar activities in which earth is either moved, stored, transported, or redistributed; except that fugitive dust shall not include any fraction of such soil or other airborne particulate matter which is of a size or substance to adversely affect public health or welfare.

C.R.S. 1973, 25-7-202(3). Under such definition, fugitive particulates are regulated in the PSD program if they are "of a size or substance to adversely affect public health or welfare."

The exemption of "fugitive dust" is an issue because EPA counts total suspended particulates ("TSP") in determining increment consumption, maintenance of primary and secondary NAAQS, and source applicability. Therefore, to the extent that the state excludes some sizes of particulate matter in these determinations, its regulations are arguably less stringent than EPA's, although as explained, because of depositional effects, there is generally an insignificant difference between the counting of TSP and the counting of smaller particulates. The basis for setting the primary NAAQS is health effects; the basis for setting the secondary NAAQS is welfare effects. These are also the bases under the State Act for counting fugitive particulates in the PSD program. Because the bases for the State's inclusion of fugitive particulates and for EPA's promulgation of particulate matter NAAQS are essentially identical, it is appropriate to consider whether the NAAQS should be the standard for determining which particulates are "of a size or substance to adversely affect public health or welfare."

However, EPA's current primary and secondary NAAQS for particulates are based on the "Air Quality Criteria for Particulate Matter" (1969), Div. Ex. R., which has generally been superseded by more recent research and analysis. For that reason, EPA in the CMA v. EPA Settlement Agreement has agreed in the near future to promulgate new primary, and perhaps secondary, NAAQS for particulates which would exclude particulates above a size posing no health or welfare risks.

EPA's staff review, in anticipation of revisions to the particulate matter definition and NAAQS, of the effects of particulate matter on health concludes that the size counted should be less than 10 um, which includes those particles capable of penetrating the thoracic regions. "Review of the National Ambient Air Quality Standards for Particulate Matter: Assessment of Scientific and Technical Information," EPA 450/5-82-001 (January 1982).

EPA staff review of welfare impacts indicates that visibility impacts are generally caused by fine particulates of less than 2.5 um. Id. at 122. However, such review recognizes that "the full size range of

particles including dustfall can contribute to soiling, become a nuisance and result in increased cost and decreased enjoyment of the environment." Id. at 140. Further, the EPA "staff recommends consideration of the economic and other effects associated with soiling and nuisance when determining whether a secondary standard for TP or for TSP or other large particle indicator is desirable," id. at 141, and that "the basis for selecting a particular level for a secondary TP or TSP standard is a matter of judgment." (emphasis added) Id. at 147. The EPA staff review indicates that EPA will probably propose a fine particulate secondary standard but is undecided as to whether to establish a TSP or large particulate secondary standard, and that there is a basis for concluding that welfare impacts are being caused by all sizes of particulates. Additionally, there was public and party testimony on welfare effects from fugitive particulates, some of which can be assumed to be large particles. See Markey, November 10 Tr. at 2 et seq.

One of the apparent concerns of parties and persons opposing the use by the Commission of TSP as a welfare standard is that the increment would be consumed and that no further development could occur. Division Exhibit W, which compares the modeled ambient impacts of TSP using a deposition model with particulates of 10 um or less using the same model, shows that the larger particles deposit quickly and that the ambient impact is relatively the same at a distance of 1000 meters or greater. The implication of this is that for many sources the modeling of increment consumption would have the same general results whether TSP is counted or whether only particles 10 um or less are counted (assuming the boundary of the source is 1000 meters or farther from the emissions point). Another implication is that welfare impacts from large particulates can only result within relatively short distances of a source.

Another concern was that the legislative intent was not to count TSP, although there was not clear evidence of legislative intent presented to the Commission. In any event, statutory language leaves the determination to the Commission to decide what particulates are of a size or substance to adversely affect health or welfare.

Given the foregoing considerations and the Commission's general interest in interpreting health and welfare effects of particulates consistent with EPA, but also given the uncertainty surrounding the revision of the particulate NAAQS by EPA, the Commission determines that in applying the definition of "fugitive dust", the adverse effects on health or welfare of fugitive particulate emissions should be determined individually for each source. Adverse welfare effects of nuisance and soiling will be presumed to occur if the source would have offsite, ambient, particulate impacts unless the permit applicant rebuts such presumption with clear and convincing evidence. The result of this presumption will be that in most cases, large particulates will be counted and there will be no difference between EPA's treatment of particulates and the state's.

Other health and welfare effects shall generally be evaluated based on EPA's most recent research and analysis, but the permit applicant shall have the burden of proof of demonstrating with clear and convincing evidence that, if any, sizes or substances of fugitive particulates do not adversely affect health or welfare. This presumption of health and welfare effects has been incorporated in the definitions of "major stationary source" and "major modification," Section XI.A.4 on Exclusions from Increment Consumption, and Section V.D.3.c.(i)(B).

Upon EPA's adoption of revised NAAQS for particulates, the Commission may consider whether to revise this Statement of Basis and Purpose or the definition of "fugitive dust" to reflect such revisions. Should EPA decide not to have a secondary NAAQS incorporating nuisance and soiling (welfare) impacts of large particulates, the Commission will consider whether the welfare effects of large particulates are significant enough to be included, or whether they are relatively insignificant and, thus, should not be counted in the state PSD Program.

DEFINITION OF “MAJOR SOURCE” AND “MAJOR MODIFICATION”

The State Act permits the counting of fugitive emissions in determining whether a source or modification is major “only if the Commission adopts regulations to include fugitive emissions for that source category.” CRS 1973, 25-7-202(4) and (5). The Federal Clean Air Act has a similar requirement at Sec. 302(j). EPA has interpreted the rulemaking requirement to mean simply a consideration in rulemaking of whether fugitive emissions should be counted and a requirement that affected industries be allowed to present policy or factual reasons why fugitive emissions should not be counted. 45 Fed. Reg. 52676 (August 7, 1980). Based on this rationale, EPA's rules currently list 26 categories of sources for which fugitive emissions are counted. A similar interpretation of the State Act is reasonable and has been adopted by the Commission.

One party recommended the addition of uranium mills and coalmines to the list of sources for which fugitive emissions would be counted. However, those sources could not be considered in this proceeding due to inadequate public notice. The Commission intends to consider those sources for listing as soon as practicable.

In the CMA v. EPA Settlement Agreement, the EPA has agreed to remove these 26 listed sources on the basis of industry's argument that the rulemaking requirement means that EPA must identify reasonable methods for measuring and modeling fugitive emissions from a category of sources. Although not agreeing that this is legally required under state or Federal law, the Commission has determined that Division Exhibit F, primarily, makes that demonstration for the ten categories located or expected to locate in Colorado.

It should be noted that measurement methods are not only available, but have been in use for a number of years and have provided test results that are the basis for the fugitive emission factors used by EPA and other control agencies, including the Colorado Air Pollution Control Division.

The following important parallels between stack emission factors and fugitive emission factors support the conclusion that fugitive emission factors are relatively as reliable and as reasonably available as stack emission factors:

- Both are based on numerous test data at different locations on different equipment or operations.
- Both are influenced by many variables (e.g., for a stack, flow rate, temperature, process variations; for a fugitive plume, wind speed, moisture content of the material, size distribution of the material).
- Neither is intended to represent actual emissions from a specific source. Actual acceptable test data for a specific or similar source would always be used in lieu of an emission factor.
- Both are intended as air management tools to allow pre-construction assessment of a source impact or as a representative value to average total emissions from a number of similar sources (e.g., all waste incinerators, commercial boilers, or coal storage piles) for such air quality management purposes as determining “reasonable further progress” in nonattainment areas.

Stack and fugitive emission factors are both estimates; such factors are nevertheless widely used by control agencies and applicants alike. However, control agencies generally have no objection to, and would prefer, actual test data in lieu of factors whenever such information is submitted. (See Testimony of McCutchen, October 28, 1982; Egley, November 18, 1982, pp. 72-75 and p. 99; Bertolin, October 29, (am), p.39.)

One party's concern involved whether the emission factors for a facility can be extrapolated to a larger facility, specifically, from a 7000 ton per day oil shale processing facility to a 50,000 ton per day facility. Scale-up is a widely used and accepted approach throughout industry for estimating the feasibility of larger-scale facilities from results at smaller-scale facilities. There are a number of well-known precautions that should always be considered when extrapolating, and a control agency should be at least as cautious in extrapolating emission levels as the applicant is in extrapolating process data. Of course, if different equipment, such as a retort, is to be used at a proposed facility, an emission estimate would be based on mining and handling practices and on different processing equipment emission factors (e.g., refinery emission factors) which are similar to oil shale processing activities where such would be more accurate than extrapolation. Therefore, either through extrapolation or through the application of other more applicable and available emissions factors, relatively accurate emissions levels from all types of oil shale facilities can be calculated.

The same modeling techniques used to model stack emissions can be and are used to model fugitive emissions. Division Appendix F. One modeling parameter, deposition, is more critical in modeling fugitive particulate emissions and should be carefully evaluated. Fugitive particulate emissions usually contain larger particles than do controlled stack emissions. These large particles generally settle out rapidly, so that the impact at a plant boundary is usually much less than would be anticipated by the quantity of emissions at the source. See “Fugitive Dust.” However, acceptable models exist which incorporate deposition and thereby provide a reasonably accurate assessment of fugitive particulate emission impact. Models without deposition can be used for gaseous and fine particulate fugitive emissions. Models have recognized limitations, but they are as accurate for fugitive emissions as for stack emissions.

The following information, which is primarily from Division Exhibit F, concerns the major policy and factual reasons for counting fugitive emissions from each of ten source categories:

Coal Cleaning. A typical plant would process 10,000 tons per year (TPY) of coal and emit approximately 280 TPY of particulate matter, 96% of which would be fugitive emissions. Over 100 TPY of the fugitive emissions are less than 15 microns in diameter and are considered inhalable particulate (IP).

Portland Cement. The typical plant produces 500,000 TPY of cement and emits approximately 370 TPY of particulate matter, 60% of which would be fugitive emissions.

Iron amp; Steel Mills (Including Coke Ovens). A typical plant would produce several million tons of steel per year and emit approximately 3,600 TPY of particulate matter, 64% of which would be fugitive emissions. The coke plant would produce over half a million tons of coke per year and emit approximately 700 TPY of particulate matter, 10% of which would be fugitive emissions, and 1,500 TPY of uncontrolled fugitive hydrocarbon emissions.

Petroleum Refineries. A typical plant would process 25,000 barrels of oil per day and emit approximately 1,100 TPY of hydrocarbons, 57% of which would be fugitive emissions.

Lime Plants. A typical plant would produce 300,000 TPY of lime and emit approximately 1,800 TPY of particulate matter, 33% of which would be fugitive emissions.

Fuel Conversion. A typical shale oil plant would produce 50,000 barrels per day of oil and emit 4,800 TPY of particulate matter, 12% (500 TPY) of which would be fugitive emissions, and 8,611 TPY of hydrocarbons, 12% (1,080 TPY) of which would be fugitive emissions.

Sintering Plants. A typical plant would emit approximately 400 TPY of particulate matter, 20% (80 TPY) of which would be fugitive emissions.

Power Plants and Boilers. A typical, but well-controlled, new 500 MW power plant burns 2.1 million TPY of coal and emits approximately 620 TPY of particulate matter, 18% (110 TPY) of which would be fugitive emissions. These fugitive emissions are from coal handling and storage, among the most visible and complaint-related of all fugitive emission sources.

Petroleum Transfer and Storage. A typical plant has a capacity of 476,000 barrels and an annual throughput of 7,123,000 barrels per year and emits 267 TPY of hydrocarbons, 72% of which are fugitive emissions.

In conclusion, the Commission has determined that fugitive emissions from the listed sources should be included in determining whether the source or modification is major for the following general reasons:

(a) Fugitive emissions consist of the same pollutants that are emitted through stacks and regulated as stack emissions;

(b) The quantity of fugitive emissions, both in absolute and in relative terms, is significant; and

(c) Although this finding is not legally required, there are methods reasonably available for measuring and modeling fugitive emissions.

PUBLIC COMMENT AND HEARING REQUIREMENTS

The Commission has adopted a regulation designed to offer maximum opportunity for any interested person to learn about, and become involved in, the PSD permit review process. Adopted in the final rule are proposals by one party that (a) the public notice be printed not only in a newspaper of local distribution, but also in one of state-wide distribution to increase the number of potential interested persons reached by the notice, (b) that the public hearing be held at least 60 days after the Federal Land Manager (FLM) has received the notice and permit application, to allow the FLM adequate response time, and (c) that any interested person receive notice of public hearing. In addition, the Commission agrees with the Division proposal to implement and maintain an “interested party” mailing list as described in Division Exhibit M.

The proposed rule contained a requirement that the Division notify the county Commissioners in affected counties when a proposed source would consume 50 percent or more of the remaining PSD increment. Two parties proposed that this requirement be deleted as allowing local land use decision-makers to unduly influence air permit decisions.

The intent of this requirement, which has been modified to notify county Commissioners of any PSD permit applications, is not to provide opportunity for counties to comment to the Division on land use; rather, it is to provide information to the counties on proposed sources so that the counties can more adequately assess their priorities and needs. PSD permit approval or denial is to be based solely on the criteria specified in this regulation; land use decisions are, and will remain, the responsibility of local governments.

Regarding the issue of land use decisions, one party commented that Section IV.C.4.e(iii) of this final rule, which solicits comments from interested parties on alternatives to a proposed PSD source or modification, constitutes the inclusion of land use factors in permit approval determinations. The Commission did not remove this section because it is required by the State Act, CRS 1973, 25-7-114(4)(f)(1)(B). Furthermore, the intent of soliciting such alternatives is for the assessment of alternatives with respect to control technology and source impact, not land use.

CONTROL TECHNOLOGY REVIEW

One party proposed that the last sentence in Section IV.D.3.a.(i)(C), which requires the owner or operator of a phased project to demonstrate the adequacy of a previous best available control technology (BACT) determination, be deleted. The Commission did not delete this sentence because (1) an EPA regulation requires such a condition and deletion of this requirement could be considered less stringent, and (2) the requirement is intended to provide for the possibility of a different BACT determination if new technology has developed between the time of permit review and the next phase of a project for which construction has not yet commenced, a time period which can easily exceed five years on large projects.

POST-CONSTRUCTION MONITORING

Five parties proposed that post-construction monitoring requirements be limited to a maximum of one year. The Commission recognizes the concern of lessening the burdens on owners or operators, particularly if the information being gathered is unnecessary. However, in many cases, there can be a very real need for monitoring for periods of time greater than a year to obtain reliable data. Accordingly, the final rule requires post-construction ambient monitoring for a period up to one year; additional ambient monitoring can be required only if it is necessary to determine the effect of emissions from the source on air quality. This necessitates an evaluation by the Division regarding the adequacy of the data, and a showing by the Division that additional monitoring is needed, before more than a year of monitoring could be required.

OPERATION OF MONITORING STATIONS

Three parties proposed that the rule be written to allow the latest changes in EPA-approved methods to be used without first having to amend the rule. The Commission agrees with the need to use the most up-to-date approved methods. Accordingly, the final rule specifies that “EPA accepted procedures....as approved by the Division” can be used.

ADDITIONAL IMPACT ANALYSIS

Section IV.D.3.a.(vi) of the final rule requires an owner or operator of a proposed PSD source to provide an analysis of the impairment to water that would occur as a result of emissions associated with the source.

This analysis is not required by the EPA rules. The inclusion of water in the additional impact analysis reflects a strong concern by the Commission based in the record regarding acid deposition. At this time, there is neither the information nor the evidence of damage to justify regulating acid deposition in Colorado. However, the vulnerability of high altitude lakes to acid deposition and the potential increases in acid-forming pollutants such as SO2 and NOx on the Western Slope from sources subject to the PSD program, particularly oil shale processing and large power plants, clearly demonstrate a need for a program to gather data, track and analyze this potential environmental problem. The inclusion of water in the additional impact analysis is intended to gather information on the problem; this analysis is not intended to affect permit approval or denial or control technology review decisions except for determinations of adverse impact to AQRVs in Class I areas. The issues that have been raised concerning water impact analysis are discussed in detail.

a. Legal Authority to Require an Impact Analysis of Acid Deposition

The State Air Quality Control Act requires a PSD permit hearing to consider "air quality impacts of the source... and other appropriate considerations." C.R.S. 1973, 25-7-114(4)(f). Acid deposition can be construed as an indirect but potentially significant air quality impact which should be analyzed, especially in light of one of the stated purposes of the PSD Program "to protect public health and welfare from any actual or potential adverse effect which.... may reasonably be anticipated to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air (emphasis added)." Section 160(1) of the Clean Air Act. Acid deposition in water is those pollutants in other media originating as emissions to the ambient air.

The Federal Land Manager (FLM) of a Class 1 area is responsible for determining whether a source has an adverse impact on air quality related values which are generally defined as follows:

Any value of an area, which may be affected by a change in air quality. Examples include flora, fauna, soil, water, visibility, culture, and odors. Forest Service Comments, October 7, 1982, p.1.

Acid deposition may adversely affect such values, and thus an analysis of its effects should be required for review by the federal land managers of affected Class I areas.

b. Major Issues

The major issues discussed during the hearings are summarized:

1. Are Colorado's watersheds sensitive to acid deposition?

John Turk of the USGS is involved in acid deposition research in Colorado and stated that 370 lakes in the Flattops Wilderness area comprising 157 hectares would be sensitive to potentially harmful degrees of acidification if precipitation attains an average pH of 4.0. (Exhibit 3, Nov. 10 Tr. at 153)

Ben Parkhurst maintains that there is talk of Colorado's lakes being sensitive (Oct. 29 Tr. at 146), but states that sensitivity must be considered together with acid inputs. Thus, if acid input to the water system is not sufficiently large the sensitivity question is not important.

Dr. William Lewis stated that Colorado's lakes are sensitive to acid deposition as demonstrated by the measured loss in buffering capacity he found in his studies. (Nov. 18 Tr. at 136-138)

In conclusion, it can be inferred that some Colorado lakes are poorly buffered and if sufficient levels of acidity are introduced into the lakes, these poorly buffered "sensitive" lakes could develop acidification problems.

2. Has acidification occurred in any Colorado lakes?

John Turk of the USGS states that there has not been any large degree of acidification taking place in the lakes or streams he has studied in the Flattops. (Nov. 10 Tr. at 172)

Ben Parkhurst also states that there is no evidence to show that any acidification has taken place in Colorado Lakes. (Oct. 29 Tr. at 144 and 150-152)

Dr. William Lewis states that he has noted pH changes in lakes he has studied (Nov. 18 Tr. at 140), but he does not consider that to be the major point in regard to the acidification question. Lewis considers the loss of buffering capacity to be the best indicator of acidification effects on lakes and he has found statistically valid evidence to show that this has occurred. (Nov. 18 Tr. at 136-138)

In summary, there is some evidence that pH has dropped slightly in some of the lakes Lewis has studied, however, it does not appear that acidification (drop in pH) has occurred to any large degree in Colorado, however, in the prediction of future impacts, buffering capacity should be examined and this has dropped in the lakes examined by Lewis.

3. Is there a potential for acidification in the future?

Paul Ferraro has done some research on estimating potential acid deposition impacts on Colorado and has determined that under different energy development scenarios, there is a potential for acidification in sensitive lakes. (Nov. 10 Tr. at 158-159)

Parkhurst states that he would not expect acidification to be a problem in the future, unless the acid deposition reaches levels similar to those found in the Northeast. (Oct. 29 Tr. at 154-156) Parkhurst states that Ferraro's study is conservative and a pH drop to 5.8 would not affect fish.

Oppenheimer (EDF Exhibit 32 p. 6) states that if a 1 $\mu g/m^3$ increase in SO_2 (annual average) occurs, acid deposition levels could result which would be damaging to sensitive lakes.

In summary, it can be inferred that there is a potential for energy development activities to cause increased levels of acids to be deposited in the watershed, and effects on pH may occur depending on the buffering capacity of the water. The degree of the effect will depend on the amount of acid, thus the amount of emissions.

4. Are there adequate methods of modeling for acid deposition effects on watersheds?

Paul Ferraro has utilized what he refers to as a “first cut” approach in estimating impacts due to acid deposition. The approach utilizes methods employed by John Turk for determining sensitivity of waters and methods for estimating deposition rates developed by Systems Applications, Inc. (Nov. 10 Tr. at 154-176)

Oppenheimer (EDF Exhibit 32 p. 12-13) states that acid deposition modeling could be conducted using presently available plume models (approved by EPA), which incorporate a plume depletion function to account for deposition. Results from this model could then be compared to deposition standards.

In summary, there appear to be only screening techniques available at this time for estimating the impacts of acid deposition.

5. What level of acidification is dangerous to aquatic ecosystems?

Parkhurst stated that fish could survive in pH's as low as 4.1. (Oct. 29 Tr. 143)

Lewis states that he feels that trout would be adversely impacted if pH dropped significantly below six as an average. He would not expect trout populations to be able to reproduce and grow at a pH below six. (Nov. 18 Tr. at 152,153)

Parkhurst also states that a permanent pH decrease from 6.0 to 5.0 is not a natural variation that many species would probably be eliminated, and species numbers and diversities reduced. (Nov. 10 Tr. at 110)

Parkhurst also testified that there is not any evidence to show that trout are capable of both reproducing and maturing in an environment, which is consistently of a pH of 4.5 or less. (Nov. 10 Tr. at 114)

In conclusion, the record does not clearly identify the point at which damage to fish will occur. However, testimony indicates that below a pH of 4.5, and maybe below 6, fish populations would not be able to reproduce and mature.

Summary

Few definitive conclusions could be drawn from the evidence and testimony. The main point of agreement was that at the present time there has not been any adverse acidification identified in any of Colorado's watersheds. The buffering capacity of lakes appears to be the important factor to consider in determining sensitivity of lakes. Testimony was given that buffering capacity has diminished in certain mountain lakes; however, the cause of this loss has not been identified. No agreement was reached on what level of pH could be tolerated by aquatic ecosystems without causing adverse impact. It could be agreed by all parties that more research must be conducted on acid deposition so that its effects may be better understood and predicted by appropriate models.

Although more information is needed, studies in the Northeastern United States, Canada, and Europe show that acid deposition can be a serious problem (Oct. 29 Tr. at 144-145 and EDF Exhibit 32 p.3). Colorado contains many lakes, which are sensitive, exhibiting low buffering capacities. If energy development occurs on the Western Slope emissions of acid precursors will grow substantially, which will result in increased acid deposition levels. The nature of energy industry in Colorado may result in rapid growth in a short period of time, which will occur before all information on acid deposition is understood. If a large industry develops and new information shows that ambient air standards and increments do not protect the state from acidification problems, a valuable resource may be damaged. For these reasons, the Commission intends to remain vigilant in monitoring this problem, and as analytical capabilities is developed or a problem develops, to re-address this issue for possible regulatory and/or legislative solutions. A subcommittee should be formed, if resources permit, to develop specific guidelines for acid deposition analyses based on recent modeling innovations. In the interim, proposed PSD sources emitting acid or acid precursors will be required to analyze the impact of these emissions on water, utilizing the most up-to-date techniques available.

AREA CLASSIFICATIONS

Several parties objected to the application of Class I sulfur dioxide increments to those areas of Colorado listed in Section VIII.B. which are otherwise Class II areas. The sulfur dioxide Class I increments are required to be enforced in these areas by CRS 1973, 25-7-209. However, pursuant to CRS 1973, § 25-7-105(8) (Supp. 1982), this Section VIII.B. may not be made a part of the State Implementation Plan (SIP) until these areas are redesignated as Class I under the procedures of Section IX. Until they are redesignated, they may only be enforced under state law and regulations. However, unlike Class I areas, the increment in these areas may be protected now. See CRS 1973, 25-7-210.

The Commission has also determined that the variances from increment consumption allowed by Sections XIV.C., XIV.D., XIV.E., and XIV.F. for Class I areas should also apply to the areas listed in Section VIII.B. It is a reasonable interpretation of CRS 1973, 25-7-209 that if the Class I (sulfur dioxide) increments are to apply to such areas; the variances from the increments should also apply. There is nothing in the State Act to indicate that the areas listed in CRS 1973, 25-7-209, are to be given better air quality protection than Class I areas, which would be the result if the variances did not apply.

REDESIGNATION

Several parties objected to what were considered burdensome requirements for redesignating areas to Class I. The adopted rule incorporates only the minimal requirements for redesignation from state and federal law. See CRS 1973, 25-7-208; Sec. 164 of the Federal Clean Air Act; 40 CFR 51.24(g). However, the Commission did lessen the burden imposed by the proposed rule on those persons requesting a redesignation by allowing such requests to be made without providing all of the information necessary for a redesignation. Who would provide such information is not specified so that it could be any combination of federal, state and private entities.

TECHNICAL MODELING & MONITORING REQUIREMENTS

Several parties proposed the inclusion of future EPA amendments or guidelines in this section of the regulation, which specifies the air quality model, monitoring and stack height requirements to be used. In response, the Commission adopted the use of “EPA approved” terminology instead of references to specific documents.

Two parties proposed language making EPA or the state responsible for any needed meteorological data. The Commission did not adopt this proposal because it is the applicant's responsibility to demonstrate that it will not cause exceedance of an NAAQS or increment, and meteorological data are nearly always needed to make such determinations. If the Division has such data, it has an obligation to make that data available to the applicant.

INNOVATIVE CONTROL TECHNOLOGY

Several parties proposed that the phrase “greater than or” be deleted from Section XIII.B.2. which specifies that the innovative system achieve emission reductions “greater than or equivalent to” BACT. The EPA regulation uses the phrase “equivalent to” and the parties considered the proposed state rule more stringent. The Commission does not consider the phrase “greater than or equivalent to” (emphasis added) to be more stringent, but instead to be a clarification that an acceptable innovation can result in either equivalent or lesser emissions from the source, but not a higher level of emissions. The preamble to the EPA PSD regulation (Div. Exhibit B, p. 84) clearly specifies that the “...final emission limitation must at least represent the BACT level that would have been initially defined...”

FEDERAL CLASS I AREAS

1. (Section XIV.A.) The State's Independent Determination of Adverse Impact to Visibility

Section XIV.A. allows the Division or the Board (if applicable) to determine independently if there is an adverse impact to visibility in Class I areas if the federal land manager (FLM) fails to make such determination or such determination is in error. This authority is intended to allow the state to fulfill the FLM's responsibility for protection of visibility if for whatever reason, including political, the FLM fails to do so. The Commission recognizes that scenic vistas are an important resource of the State of Colorado. (Colorado Mountain Club Exhibit #1) A subcommittee may be formed to further develop visibility protection for the State of Colorado.

Several parties suggested problems with the state's independent authority to make such visibility determinations. These consisted of (1) measuring or predicting visibility impairment, (2) quantifying man-induced, as opposed to naturally-occurring, visibility impairment, (3) the subjectiveness of visibility impairment, (4) the lack of correlation of current particulate standards to visibility impairment, and (5) the lack of guidance in the regulation regarding determinations of significant and adverse visibility impacts.

The Commission's response to these concerns is as follows:

(1) Although it is true that there are not federal reference methods for measuring visibility at this time, there are reliable means to accurately measure and predict visibility impairment. Scientific instruments such as the telephotometer, nephelometer, and the fine particulate monitor are recognized as being capable of obtaining objective information on visibility-related parameters. Photographs are also useful in visibility assessment.

Visibility theory involving scattering and absorption of light is well documented and has been incorporated into the models described in the Workbook for Estimating Visibility Impairment (EPA-450/4-8-031). The preface to the Workbook for Estimating Visibility Impairment states: "EPA believes these techniques are at a point where the results should now be employed to assist decision-makers in their assessments." "These techniques" include the Plu-Vu Model. Div. Ex. J at iii. Thus, these models are appropriate for use at this time.

(2) It is possible to determine if a source of visibility impairment is natural or anthropogenic through various chemical/physical analysis techniques. Improvements in air sampling and analytical techniques have made available, for the first time, detailed information on the chemical and physical nature of the ambient aerosol and of source emissions. Using these chemical "fingerprints," particle morphology and the natural variability of air shed sources, recent developments in receptor models have provided new techniques of assigning source contributions.

(3) Perception of visibility impairment is subjective and involves individual variability; however, norms do exist around which an assessment can be made. As noted, EPA supports the use of its Workbook for Estimating Visibility Impairment as a guide to decision makers.

(4) Particulate standards do not address visibility-related effects. It is also true that the major anthropogenic visibility impairing pollutant is fine particulate matter. Since the Class I increment for particulate is in terms of total mass concentration, rather than fine particulates, visibility impairment could occur without the increment being violated. Furthermore, the particulate increment is a maximum allowable ground level concentration; consequently, it will not protect visibility impaired by plumes at elevations above ground level. These facts form the basis for the Clean Air Act requirement that visibility should be assessed and regulated in a separate analysis. Div. Ex. S.

(5) The primary guidance for determinations of adverse impact to visibility would be the Workbook for Estimating Visibility Impairment, which has very specific guidelines.

2. (Section XIV.B.) Pre-Application and Operational Monitoring of Air Quality Related Values (AQRVs)

Section XIV.B. of the regulation allows the Division to require a source, which will have or is likely to have an impact on any Class 1 area to conduct monitoring to establish the baseline status of and impacts on AQRVs in such Class 1 areas. EPA has not imposed this requirement on applicants, although under EPA rules and the Commission rule, Section IV.D.3.(a)(vi), an Additional Impact Analysis is required which would include an analysis of impacts on AQRVs based on available data, for example, through literature searches. The data gathered from such monitoring are important and necessary in aiding the federal land manager of a Class 1 area in determining whether or not a source will cause an adverse impact on AQRVs and the state in deciding on concurrence with such determination. The data also aid the public information function of the Additional Impacts Analysis. The authority to require submission of such information includes, but is not limited to, CRS 1973, 25-7-206(2), 25-7-106(5) and (6), and 25-7-114(4).

A. National Park Service and Forest Service Testimony and Positions

The National Park Service ("NPS") and the Forest Service ("FS") supported the rule as a supplement to their current monitoring activities on the basis that the data is necessary to determining adverse impacts on AQRVs, including visibility. See Mitchell, Nov. 18 Tr. at 122 et seq., 161 et seq.; Haddow, Oct. 28 (p.m.) Tr. at 22 et seq., Nov. 10 Tr at 68 et seq.; Region 2-USDA Forest Service Comments on Proposed PSD Rule; Comments on the May 19, 1982 Proposed Colorado PSD Regulation by National Park Service Air Quality Division.

The NPS stated its willingness to provide a list of sensitive receptors of AQRVs to applicants for monitoring. Mitchell, Nov. 18 Tr. at 162.

The Forest Service recognized severe technical difficulties and high costs of monitoring some pollutants and visibility in wilderness areas. Haddow, Oct. 28 (p.m.) Tr. at 22 et seq. However, lichen monitoring could be done without great difficulty and special use permits are available for some complex monitoring. Haddow, Nov. 10 (p.m.) Tr. at 112., The FS intends to identify sensitive indicators of AQRVs for each Class 1 area, e.g. 2 or 3 species of lichen and 2 or 3 scenic views, and proposes that the state require the monitoring of such indicators Id. at 82-83.

B. Environmental Defense Fund's (EDF) and Friends of the Earth's (FOE Position

EDF's and FOE's general contentions in support of the proposed monitoring requirements were:

1. the technology for monitoring of AQRV's exist;

2. the Forest Service has identified AQRV's for wilderness areas;

3. although some monitoring is being done, most areas are not being monitored and will not be without the participation of industry;

4. decisions on adverse impacts to AQRVs cannot be made rationally without reliable scientific evidence; and

5. the state is required to have a visibility monitoring program by EPA rules, 40 CFR 51.305.

"EDF and FOE Final Recommendations; Summaries of the Record and Legal and Policy Analyses," Section IV.

C. Trade Association Parties' Position

The Trade Association Parties' general contentions in opposition to the monitoring requirements were:

1. The Clean Air Act places the responsibility on the federal land manager to determine adverse impacts on AQRVs and, thus, the responsibility to obtain the data necessary to make such determination;

2. There is insufficient information available at this time to develop an AQRV monitoring program in that sensitive receptors for each Class 1 area have not been identified, there is no monitoring reference method available and no validated models to project impacts of particular emissions levels;

3. In some Class 1 areas monitoring is either physically impossible or inordinately expensive; and

4. The Division's discretion in specifying sensitive receptors is too vague and broad.

Trade Association Parties' Closing Argument at 31-34.

D. Commission Analysis and Decision

The cited testimony and evidence and other portions of the record support the conclusion that monitoring of AQRVs or sensitive receptors of AQRVs would be helpful, and in many cases necessary, to determine whether adverse impacts on AQRVs would occur. It is also evident that baseline data are not available and may never be developed by federal land managers for some AQRVs and sensitive receptors and for some Class 1 areas. Thus, the primary issue is where to place the responsibility for obtaining background data on AQRVs - the federal land manager, the state and/or the applicant.

As the Forest Service suggested, it is traditional permitting practice to require a permit applicant to obtain the data upon which the agency decides. Haddow, Nov. 10 (p.m.) Tr. at 89. This practice is consistent with the economic philosophy that companies should internalize their environmental costs. Furthermore, the Clean Air Act does not change such practice; it places the "affirmative responsibility" on federal land managers to protect AQRVs and to consider whether there will be an adverse impact on AQRVs but does not expressly state whose responsibility it is to provide necessary data upon which to exercise their responsibility.

The Commission has determined that there is available research and test methods for obtaining background data and impact data on many AQRVs that will be critical in making adverse impact determinations, even though there are not generally adopted reference methods or modeling techniques. For example, to perform a reasonably accurate visibility impairment analysis, background data is needed. Div. Ex. J. Although there are no generally accepted reference methods for estimating visibility impacts, methods for estimating visibility impairment have been developed and are relatively sophisticated. See Div. Ex. J.; Geier, Oct. 28 (a.m.) Tr. at 62-71. The rule recognizes this potential limitation on monitoring AQRVs by only allowing monitoring if "monitoring methods are reasonably available and research and development of monitoring methods are unnecessary."

In response to the objection that the Division's discretion in selecting AQRVs for monitoring is too vague and broad, the rule provides:

1. A definition of AQRVs (in the Common Provisions Regulation);

2. That the Division will consult with the federal land manager in the selection of AQRVs; and

3. That the AQRVs selected must be important to the affected Class I area and there must be cause to believe that monitoring of the AQRVs will provide a basis for evaluating effects to the AQRVs.

In response to the objection that the monitoring of AQRVs may not be economically reasonable, the rule provides that:

1. no duplication of monitoring may be required;

2. not more than 3 AQRVs may be required to be monitored;

3. monitoring methods must be reasonably available;

4. monitoring may only be required if the source is a major contributor to the expected effects on the AQRV; and

5. it is economically reasonable as compared to other monitoring and analysis expenses required of a PSD permit applicant.

SULFUR DIOXIDE AMBIENT AIR STANDARDS FOR THE STATE OF COLORADO

The proposed rule would have revised the Colorado ambient air quality standard for sulfur dioxide to be consistent with the federal standard. Because the Colorado standard is not enforceable in the permitting process, see CRS 1973, 25-7-114(4)(g), the Commission ordered on November 10, 1982 that revisions of the state ambient air quality standard for SO_2 be removed as a subject of this rulemaking.

The Commission agreed to reconsider the state standard if and when it becomes enforceable.

PUBLIC ACCESS TO CONFIDENTIAL INFORMATION

One party raised the issue of whether Section VII. of Regulation Number 3 improperly restricts access to confidential information, which would be available under the Federal Clean Air Act. Section VII. may not be considered for amendment in this rulemaking due to lack of public notice.

V.E. Adopted December 21, 1995 - Negligibly Reactive Volatile Organic Compounds

December 21, 1995 (Definitions for Negligibly Reactive VOC and Net emission increase *h*.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, § 25-7-110.5, C.R.S.

Basis

Regulations 3, 7 and the Common Provisions establish lists of Negligibly Reactive Volatile Organic Compounds (NRVOCs). The revisions adopted consolidate the list of NRVOCs into the Common Provisions, assuring that the same list of NRVOCs apply to all the Colorado Regulations. This provides more consistency in those chemicals regulated as VOCs.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act provides the authority for the Colorado Air Quality Control Commission to adopt and modify Regulations pertaining to organic solvents and photochemical substances. §§ 25-7-109(2)(f) and 25-7-109(2)(g), C.R.S., grant the Commission the authority to promulgate regulations pertaining to Organic solvents and photochemical substances. The Commission's action is taken pursuant to authority granted and procedures set forth in §§ 25-7-105, 25-7-109, and 25-7-110, C.R.S.

Purpose

These revisions to Regulations Number 3, 7, and the Common Provisions are intended to clarify substances that are negligibly reactive VOCs, which are reflected in the EPA list of non-photochemically reactive VOCs. By consolidating the list (which consists of the EPA list of non-photochemically VOCs), and adopting the EPA definition by reference, a single list of negligibly reactive VOCs will apply uniformly to all Colorado Air Quality Control Commission Regulations.

This revision will also include EPA's recent addition of acetone to the negligibly reactive VOC list. The addition of acetone to the list of negligibly reactive VOC's provides additional flexibility to sources looking for an alternative to more photochemically reactive VOCs. Because the EPA has added acetone to their list of non-photochemically reactive VOCs many industries, which make and supply products to Colorado industries, are planning to substitute acetone for VOCs that are more reactive. This change in the content of products purchased by industry for use in Colorado would adversely affect industries in Colorado if acetone remains a regulated VOC in Colorado. By adopting acetone as a negligibly reactive VOC, industries will be able to take advantage of and benefit from this possible shift in product contents.

Previously written statements of the basis and purpose of this regulation and revisions have been prepared and adopted by the Commission. These written statements have been incorporated in this regulation by reference and in accord with C.R.S. 1973, 24-4-103 as amended.

V.F. Adopted November 21, 1996 - Negligibly Reactive Volatile Organic Compounds

Revisions to Regulation Numbers 3, 7, 8 and Common Provisions

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, § 25-7-110.5, C.R.S.

Basis

Regulations 3, 7 and the Common Provisions establish lists of Negligibly Reactive Volatile Organic Compounds (NRVOCs). The revisions adopted update the list of NRVOCs so that the state list remains consistent with the federal list. Additionally, because perchloroethylene will no longer be listed as a VOC in Regulation Number 7, Section XII, *Control of VOC Emissions from Dry Cleaning Facilities using Perchloroethylene as a Solvent,* is being deleted.

Regulation Number 8 and 3 list the federal Hazardous Air Pollutants (HAPs). In the June 8, 1996 Federal Register the EPA removed Caprolactam (CAS 105-60-2) from the federal list of Hazardous Air Pollutants. The conforming changes in Regulation Number 3 Appendices B, C and D have been made to keep the list of federal HAPs in Regulation Number 3 consistent with the federal list. The list of HAPs in Regulation Number 8 has been removed and a reference to the list in Regulation Number 3 has been added.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act provides the authority for the Colorado Air Quality Control Commission to adopt and modify Regulations pertaining to organic solvents and photochemical substances. § 25-7-109(2)(f) and 25-7-109(2)(g), C.R.S., grant the Commission the authority to promulgate regulations pertaining to organic solvents and photochemical substances. §§ 25-7-105(1)(l)(b) and 25-7-109(2)(h) provide authority to adopt emission control regulations and emission control regulations relating to HAPs respectively. The Commission's action is taken pursuant to authority granted and procedures set forth in §§ 25-7-105, 25-7-109, and 25-7-110, C.R.S.

Purpose

These revisions to Regulations Number 3, 7, 8 and the Common Provisions are intended to update the state lists of NRVOCs, the Ozone SIP, and HAPs for consistency with the federal lists.

V.G. Adopted April 19, 2001 - Any Credible Evidence and NRVOCs (methyl acetate)

(Incorporation by Reference of Federal Definition of Negligibly Reactive Volatile Organic Compounds (NRVOCs and Credible Evidence Provisions)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, §§ 24-4-103(4) and (12.5), C.R.S. and the Colorado Air Pollution Prevention and Control Act, § 25-7-110.5, C.R.S.

Basis

The Reason for this revision to the Common Provisions Regulation is to correct an inadequacy in the Colorado State Implementation Plan and Section 110(a)(2)(A) and the (C) of the Clean Air Act. The Credible Evidence revisions need to be incorporated into the Colorado SIP to allow for the use of any credible evidence (ACE) for the purpose of submitting Title V compliance certifications or establishing whether a source has violated or is in violation of any emission standard contained in any regulation that has been submitted to the U.S. EPA. Failure to correct this SIP revision will result in promulgation of a Federal Implementation Plan (FIP) to correct the deficiency. In a separate action of the described rulemaking, the definition of Negligibly Reactive Volatile Organic Compounds (NRVOCs) included in the Common Provisions Regulation is being changed to incorporate by reference the federal Volatile Organic Compound definition at 40 CFR § 51.100(s)(1). This incorporation adds methyl acetate to the list of compounds included in the Common Provisions Regulation considered as NRVOCs and thereby exempts methyl acetate from the definition of volatile organic compounds for regulatory purposes.

Background

The credible evidence revisions are based on Section 113(a) of the federal Clean Air Act. This section authorizes the EPA to bring administrative, civil or criminal enforcement action “on the basis of any information available....” Although the Clean Air Act sets no inherent limits on the EPA's authority to use any type of information to prove a violation, some of EPA's regulations provide for specific test methods for determining compliance and have been read by some to constrain EPA's enforcement authority. In the district court case, United States v. Kaiser Steel Corp., No. CV-82-2623 IH (C.D. Cal. January 17, 1984), the court construed the language of a New Source Performance Standard, at 40 CFR § 60.11, as limiting the admissible evidence of violations of opacity standards to observations utilizing Method 9, the opacity reference method. When the EPA attempted to use expert testimony pertaining to opacity to prove the existence of violations only on those days without Method 9 test data, the court rejected the evidence and held that EPA could prove violations only on those days where the Method 9 test data was conducted. In contrast, the court in National Lime Association v. EPA, 627 F.2d 416, 446, n. 103 (D.C. Cir. 1980) specifically rejected the assertion that standards can only be supported by reference test data.

In the 1990 Clean Air Act Amendments, Congress included an enforcement title, Title VII, to enhance compliance and enforcement authorities. The amended Section 113(e)(1) provides that “in determining the amount of any penalty to be assessed,” the agency shall take into consideration “the duration of a violation as established by any credible evidence (including evidence other than the applicable test method).” Legislative history for this amendment shows that Congress meant to clarify that in an enforcement action, courts are not restricted to reference test method data, but may consider any evidence of violation or compliance admissible under relevant evidentiary rules (see S. Rep. No. 228, 101st Congress, 1st Session 1, 358 (1989), reprinted in 1990 U.S. Code Cong. & Admin. News 3385, 3741.[1] Section 113(e)(1), along with Section 113(a), as described, clarify that compliance and noncompliance can be determined on the basis of any credible evidence. Subsequent to the 1990 Clean Air Act Amendments, two court cases have upheld the use of credible evidence other than the reference test method specified in the regulation. *See* Sierra Club v. Public Service Company, 894 F. Supp. 1455 (D.C. Colo. 1995), *and* Unitek Environmental Services v. Hawaiian Cement, Civ. No. 95-00723 (D. Hawaii 1996).

[1]The Senate Report stated that Section 113(e)(1) makes clear that the agency may rely upon any credible evidence of violations in pursuing alleged violations. Further, the Report explained that the amendment clarifies that courts may consider any evidence of violation or compliance admissible under the federal Rules of Evidence, and that they are not limited to consideration of evidence that is based solely on the applicable test method in the State Implementation Plan or regulation. Thus, this amendment overrules the ruling in United States v. Kaiser Steel Corp. (citation omitted) to the extent the court in that case excluded the consideration of such evidence. (Senate Report at 358, Reprint at 3741.)

The federal credible evidence revisions, codified in 40 CFR §§ 51.212(c) and 52.33(a), require that State Implementation Plans must provide for enforceable test methods for each emission limit specified in the plan and the plan "must not preclude the use, including the exclusive use, of any credible evidence or information," for the purposes of submitting compliance certifications or establishing whether a person has violated or is in violation of any standard in the plan. The revisions provide that where information, such as non-reference emissions data, parametric data or engineering analysis is equivalent to information generated by reference test methods, it may be used to establish compliance or noncompliance.

The federal credible evidence revisions received substantial public comment from state and local air pollution control agencies, large and small industries, trade associations and environmental organizations. A summary of the public comments received the EPA's response to the comments and the final rule is contained in 62 Federal Register 8314 (Feb. 24, 1997).

Shortly after the rule became final, several trade associations brought a court action for judicial review (*see* Clean Air Act Implementation Project, *et al.,* v. Environmental Protection Agency, *et al.*), in the United States Court of Appeals for the District of Columbia. The Colorado Air Pollution Control Division held workgroup meetings with affected and interested parties to discuss incorporating the federal credible evidence revisions into the State Implementation Plan.

At the request of affected industry, the discussions were withheld until after the final court decision on appeal. The Court of Appeals issued its final decision on August 14, 1998, dismissing the petition for review and upholding the credible evidence revisions. The Court held that "there are too many imponderables." Whether credible evidence can be used to determine compliance or noncompliance must be decided on a case-by-case basis, given the universe of all possible evidence that might be considered "credible" and that application of evidence other than a specified reference test result may potentially affect some standards, but not others.

The Colorado Utilities Coalition and the Colorado Association of Commerce and Industry have requested that the Commission review and determine whether emissions standards in Colorado regulations were established in reliance on specific reference test methods and whether incorporating the credible evidence revisions into the Common Provisions Regulation will alter the stringency of any of Colorado's regulations. These are some of the same questions put before the Court of Appeals for the District of Columbia in the Clean Air Act Implementation Project case described, and that the court refused to answer because of the many imponderables presented.

There are over 130-reference test methods described in the federal and Colorado regulations. Reliance on credible evidence other than a reference test may potentially affect some standards, but not others. Added to this is the fact that "credible evidence" is not a finite evidentiary set - the Commission cannot conceive of all possible evidence that might be considered credible. There are some emissions standards included in State Implementation Plans, such as the grain loading particulate matter standards contained in Colorado Regulation Number 1, that were established without consideration of the "back half" or condensable portion of the particulate matter emissions. In this situation, reliance on evidence showing noncompliance with particulate matter standards through test methods, AP-42 factors, or other engineering analysis that considers the condensable portion of the particulate matter emissions will render compliance with Regulation Number 1 emission limitations more stringent.

On the other hand, it is not possible to conceive of all the evidence that may be credible in determining whether a source is in compliance with the “front half” particulate matter emission standards in Regulation Number 1, other than the through the use of reference Test Method 5. In all cases, the proponent of evidence other than the reference test method, whether for purposes of demonstrating compliance or noncompliance in an enforcement action or challenging a permit concerning demonstrations of ongoing compliance for compliance certifications, bears the burden of demonstrating that the evidence is credible and consistent with compliance demonstrations through use of the relevant performance or reference test method. The Colorado Rules of Evidence will guide the Commission's determinations of whether evidence is credible, i.e., technically relevant and legally admissible in an adjudicatory matter before the Commission.

With respect to the methyl acetate incorporation by reference, in April 1998, the EPA modified 40 CFR Section 51.100(s)(1) to add methyl acetate to the list of compounds having negligible photochemical reactivity and exempting it from the definition of volatile organic compounds (63 Federal Register 17331, April 9, 1998). The EPA found that methyl acetate had photochemical reactivity comparable to or less than that of ethane, both on a per gram and per mole basis.

Ethane has been on the list of compounds having negligible photochemical reactivity since 1977. By incorporating the federal list of compounds included in 63 Federal Register 17331 (April 9, 1998) into 40 CFR § 51.100(s)(1), Colorado's Negligibly reactive VOCs definition conforms to the federal list.

Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-105(a)(I), provides that the Colorado State Implementation Plan meet all requirements of the federal Clean Air Act. The authority to promulgate rules and regulations to assure conformity with federal Clean Air Act requirements is given to the Colorado Air Quality Control Commission under § 25-7-105. § 25-7-105(IV)(12), in particular, provides the authority for the Commission to adopt rules consistent with the federal Clean Air Act Title V minimum elements of a permit program.

Purpose

The specific purpose of incorporating the ACE revisions into the Common Provisions is to make the Colorado SIP consistent with the federal Clean Air Act requirements and avoid promulgation of a FIP. The incorporation by reference of the current federal definition of compounds having negligible photochemical reactivity also makes the Colorado SIP consistent with the federal Clean Air Act requirements.

Federal Requirements

The rule revisions are required by Section 110(k)(5) of the federal Clean Air Act, 42 U.S.C. §7410(k)(5) that finds the SIP inadequate to comply with Sections 110(a)(2)(A) and (C) of the Clean Air Act, 42 U.S.C. §§7410(a)(2)(A) and (C), because the Colorado SIP may be interpreted to limit the types of credible evidence or information that may be used for determining compliance and establishing violations. Neither the rule nor the incorporation by reference exceed or differ from federal requirements.

V.H. Adopted August 16, 2001 - Affirmative Defense

Revisions to Common Provisions Regulation

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, §§ 24-4-103(4) and (12.5), C.R.S. for and the Colorado Air Pollution Prevention and Control Act, § 25-7-110.5, C.R.S.

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-109, C.R.S., provides the Commission the authority to adopt and revise rules and regulations that are consistent with state policy regarding air pollution and with federal recommendations and requirements. § 25-7-105(1), C.R.S., grants the Commission the authority to promulgate rules necessary to implement and administer the Colorado Air Pollution Prevention and Control Act. § 25-7-106(1), C.R.S., grants the Commission maximum flexibility in developing an effective air quality control program. § 25-7-105(1), C.R.S., provides the authority for the Commission to make state implementation plan revisions.

Basis

The reason for this revision to the Common Provisions regulation is to provide appropriate relief, in terms of an affirmative defense to civil penalties, for sources that experience excess emissions during startup, and shutdown events, despite their best efforts to comply with applicable emission standards. In general, startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning, design and operation will eliminate violations of emission limitations during such periods.

For some source categories, given the types of control technologies available, there may exist short periods of emissions during startup and shutdown when, despite best efforts regarding planning, design and operating procedures, the otherwise applicable emission limitation cannot be met. The Affirmative Defense for Excess Emissions During Startup and Shutdown revisions to the Common Provisions regulation recognize this fact. Although all excess emissions arising during startup and shutdown must be treated as violations under this rule, an affirmative defense may be available to a source that will shield it from civil penalty liability if the owner/operator meets the requirements of the rule. In making affirmative defense determinations, it is the intent of the Air Quality Control Commission to allow the use of all sources of information, including any credible evidence, the affirmative defense criteria, physical inspection of the facility and review of documentation pertaining to maintenance and operation of process and air pollution control equipment to determine whether the owner/operator proved the relevant factors under this rule. The affirmative defense provision is not available for claims for injunctive relief.

The Commission established several requirements that an owner/operator must prove in order to avail itself of an affirmative defense to civil penalties. These requirements must be evaluated on a case-by-case basis according to the type of source as well as the nature of the cause of any excess emissions. For example, paragraph D requires that an owner/operator demonstrate that it minimized the frequency and duration of operation in startup and shutdown periods to the maximum extent practicable. In general, emission standards applicable to a source category are based on the type of operation, so excess emissions must be evaluated in light of the cause and its relation to the standard. On the other hand, sources naturally have differences in the frequency and duration of shutdown and startup cycles and this fact must be included in any affirmative defense evaluation.

This revision specifically refers in factor E. to minimizing the impact on ambient air quality. The Commission believes that every effort should be made to avoid adverse air quality impacts, even though the ambient air may be better than established minimum standards. Whether some step is possible should take into account the relative cost of the step and the time to implement it in relation to the amount or duration of excess emissions that would be avoided.

The Commission initially proposed including off-line maintenance periods between shutdown and startup in this affirmative defense provision. The Commission chose not to provide an affirmative defense for off-line maintenance periods, but to rely on the enforcement discretion of the Air Pollution Control Division to address excess emissions during these periods. The Commission recognizes that during off-line maintenance at coal-fired electric utility boilers, infrequent, short-term periods of excess opacity readings may occur despite the use of good air pollution control practices. Other types of sources may experience

similar occurrences. The Commission anticipates that, in evaluating its enforcement options and penalty determinations regarding excess emissions during off-line maintenance periods, the Division will consider factors similar to those in this rule for shutdown and startup periods. In particular, factors B., E. and H. will be important in determining the appropriate response to a source's excess emissions. The Division should also consider whether the owner/operator used available scheduling options to minimize the impact of potential excess emissions on ambient air quality.

The Commission decided to allow use of an affirmative defense only for violations of performance standards or emission limitations with an averaging time of twenty-four hours or less. Sources subject to standards or limitations with longer averaging times should be able to meet those requirements in spite of excess emissions during periods of startup or shutdown. Restricting the affirmative defense rule in this way should help to assure that excess emissions from a single source or small group of sources do not cause an exceedance of ambient air quality standards or Prevention of Significant Deterioration (PSD) increments.

Purpose

The specific purpose of incorporating the Affirmative Defense revisions into the Common Provisions is to make the Colorado SIP consistent with the federal EPA's Policy Regarding Excess Emissions During Malfunction, Startup and Shutdown dated September 20, 1999.

Federal Requirements

The rule revisions are not required by the federal Clean Air Act but, to the extent states wish to obtain EPA approval of a state implementation plan revision to provide relief for excess emissions that occur during startup and shutdown events, the rule revisions must be consistent with EPA's policy dated September 20, 1999.

V.I. Adopted July 18, 2002 - General Cleanup and Clarifying Changes

Revisions to Common Provisions Regulation

This Statement of Basis, Specific Statutory Authority and Purpose comply with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4) and (12.5), C.R.S., for new and revised regulations.

Basis

The Common Provisions Regulation is designed to assist in the implementation of more substantive regulatory programs authorized under the Colorado Air Pollution Prevention and Control Act (“Act”) including provisions of the State Implementation Plan addressed in §, 25-7-105(1)(a), C.R.S., emission control regulations addressed in §, 25-7-105(1)(b), C.R.S., and prevention of significant deterioration requirements addressed in §, 25-7-105(1)(c), C.R.S., as well as other authorized programs under the Act. The current revisions have been promulgated in order to facilitate this goal. The majority of the revisions were proposed by the Air Pollution Control Division based on their internal review of the regulation and extensive discussions with interested parties regarding shortcomings of the regulation. The Division's initial proposals were addressed at length during a subcommittee process involving the Commission, the Division, stakeholders and other interested parties. During this process, participants commented on the initial proposal and offered additional suggestions. The proposal presented to the Commission is a collaborative effort of the Division and interested stakeholders.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in §, 25-7-105(1), C.R.S., which gives the Air Quality Control Commission authority to promulgate rules and regulations necessary for the proper implementation of the Air Pollution Prevention and Control Plan. Additional authority for these revisions is set forth in §, 25-7-106, C.R.S.

Purpose

A review of the Common Provisions Regulation revealed numerous grammatical, stylistic and formatting errors, language ambiguities and obsolete or duplicative provisions. These revisions are intended to cleanup, clarify and streamline the Commission's Common Provisions Regulation. The revisions are not intended to add additional requirements, delete requirements or substantively change existing requirements.

The changes reflected in the revisions to the Common Provisions Regulation fall into three categories: 1) deletion of obsolete or duplicative provisions; 2) stylistic, grammatical and formatting changes designed to improve readability of the regulation; and 3) language changes to address ambiguities and avoid unintended regulatory results.

1) Elimination of Obsolete and Duplicative Provisions

Over the years, the Common Provisions Regulation has expanded to include new definitions and other provisions intended to assist in implementing the substantive requirements set forth in other regulations. In reviewing the regulation, it was determined that many of the definitions and a few of the other requirements were either obsolete or duplicated in other regulations. For example, Section III., regarding Smoking Gasoline Powered Motor Vehicle and Section X., addressing Conflict of Interest by Commission Members were deleted from the regulation because they are duplicated in other regulations. Provisions included in Section III can be found in Commission Regulation Number 11 and Section X. of the Commission's Procedural Rules. Similarly, a number of definitions set forth in the Common Provisions are also contained in Regulation Number 3.

Because Regulation Number 3 underwent contemporaneous review, the primary focus was to eliminate duplications between the Common Provisions and Regulation Number 3. Duplicative provisions that were only applicable to Regulation Number 3 were deleted from the Common Provisions Regulation. Provisions applicable to multiple regulations remain in the Common Provisions and were deleted from Regulation Number 3. Certain duplicative definitions not related to Regulation Number 3 were also addressed. A full review of all the Commission's regulations was not undertaken during this rulemaking process. The duplicative provisions that remain in the Common Provisions Regulation will be addressed when other regulations are opened for revision.

2) Stylistic, Grammatical and Formatting Revisions

The revisions include grammatical, formatting and stylistic changes designed to make the regulation more readable. For example, reference to the “Air Quality Control Commission” in Section I.A. was changed to “Commission” and a number of parenthetical acronyms were eliminated. These changes are not designed to change applicable requirements, but rather to streamline the language of the regulation and to make the regulation stylistically consistent with other Commission regulations.

The regulation contains numerous references to the Colorado Air Quality Control Act. In 1992, the legislature changed the name of the Act to the Air Pollution Prevention and Control Act. References in the Common Provisions were revised to reflect this change. Additionally, date references to the Act and other enactments were eliminated to clarify that the references are to the current enactments and not to some outdated version. The date reference in the definition of ozone depleting compound was retained to reflect that future changes to the federal ozone depleting compound lists will need to be incorporated by reference during subsequent rulemakings.

3) Clarifying Changes

The revisions address a number of concerns that the Division and other interested parties raised during the subcommittee process regarding ambiguous provisions. For example, pursuant to Regulation Number 1, different equations exist for calculating emission limits for manufacturing process equipment and fuel burning equipment. There has been some confusion regarding which standard applied when fuel-burning equipment was used as part of a manufacturing process. The revisions to the Common Provisions Regulation change the definition of fuel burning and add a definition for manufacturing process equipment to clarify that fuel burning emissions are counted as manufacturing process emissions when they are vented through a common stack with other emissions from the manufacturing process. When fuel-burning emissions are vented separately, they are subject to the fuel burning equation.

The definition of construction was changed to clarify that while the statutory definition will govern in most instances, there are certain programs such as PSD, NSR/NAA, and NSPS, that may utilize different definitions of construction.

Revisions to the definition of federally enforceable clarify the provisions that can be considered federally enforceable. The previous definition appeared unduly restrictive. This issue is important with respect to the PSD and NSR/nonattainment area (NAA) programs since a source may avoid program requirements by taking federally enforceable conditions that reduce the level of emission below the major source threshold. The new definition clarifies that state only requirements, whether specifically denoted as such in a permit or in the regulations, but not in the state implementation plan, are not federally enforceable. The definition further clarifies that all requirements contained in an operating, PSD or NSR/NAA permit are federally enforceable.

Similarly, the definition of enforceable was revised to more accurately reflect that enforceable encompasses both federal and state enforceable requirements regardless of where the requirement appears.

In the prior version of the regulation, the definitions for coal and Reid Vapor Pressure contained references to a specific test method. These provisions were changed to refer more generally to “appropriate” test methods. These changes reflect that test methods can be updated and changed depending on the circumstances. What is considered appropriate in a given case will depend on the factual circumstance under which the test would be applied.

The definition of air pollution source, as well as several other definitions, was modified to eliminate inconsistencies with the statutory definition. Despite these inconsistencies, the Commission believes that the prior definitions were intended to have the same practical meaning as the statutory definition.

The Commission decided not to adopt changes to the definition of upset conditions or to the upset conditions and breakdown provision in the Common Provisions Regulation. The Division proposed revisions to the upset provision to address concerns expressed by the Environmental Protection Agency, then engaged in extensive discussions with interested stakeholders and the Environmental Protection Agency. In view of the terms included in the existing regulation, and the Commission's and Division's interpretation of the upset provision, the Commission concluded that no change is necessary at this time.

4) Other Issues

During the subcommittee process a question was raised as to why the definition of air pollutant differed in the Common Provisions and Regulation Number 3. These differences reflect the fact that the term is defined differently in the State and Federal Act. The Common Provisions definition reflects that State Act. The Commission is not aware of any practical implications arising from these differences.

V.J. Adopted March 10, 2004 - Definition of condensate.

The definition of the term condensate was adopted in conjunction with the Ozone Action Plan and contemporaneous revisions to Regulation Number 7 to control emissions of volatile organic compounds from condensate operations, as described in the statement of basis, specific statutory authority, and purpose for the March 10, 2004 revisions to Regulation Number 7.

The statutory authority for the definition is set out in §§ 25-7-105(1)(a) and (1)(b); 25-7-106(1)(c) and (5); and 25-7-109(1)(a) and (2), C.R.S.

V.K. Adopted March 12, 2004 - Regulation Number 9

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5.

Basis

The rule revisions adopted address the use of air curtain destructors for burning materials generated as a result of projects conducted to reduce the risk of wildfire. Regulation 9 deals with open burning activities and Regulation 3 contains emission notice requirements. The Common Provisions Regulation contains a definition related to these devices.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-109(2)(e), C.R.S., provides the authority for the Commission to adopt and modify emissions control regulations pertaining to open burning activities. These regulatory changes implement the provisions of the Colorado Air Pollution Prevention and Control Act, 25-7-101, et. seq., that prohibit anyone from operating an air pollution source such as an air curtain destructor without first obtaining a permit.

The Commission's action is taken pursuant to procedures set forth in §§ 25-7-105, 25-7-110 and 25-7-110.5, C.R.S. The Commission took into consideration the appropriate items enumerated in § 25-7-109(1)(b), C.R.S.

Purpose

In 2002, the Commission adopted regulations to implement the requirements of Senate Bill 99-145 and Senate Bill 01-214 relating to open burning activities by public and private land managers and other significant users of fire for range and forest management. Since that action, the public and both state and federal agencies have focused on the risks associated with wildfires, particularly in the forest/urban interface throughout Colorado. The Commission views reduction of the risks associated with wildfires and their potential for serious public health consequences as a result of the emissions from the fires as an important component in protecting public health and the environment. The Commission also views the use of methods to reduce risk that also reduce air pollution emissions compared to other methods as an additional important factor.

In this rule adoption, the Commission acted to enlarge the options available to dispose of materials generated by projects conducted to reduce the risks of wildfire. It is the intention of the Commission that practical alternatives to burning be used when they exist.

The Commission reviewed the available emissions data and limited uses proposed for air curtain destructors. That information demonstrated to the satisfaction of the Commission that, with appropriate permit conditions, the destructors can safely be used to dispose of certain materials without endangering public health, causing, or contributing to a violation of the National Ambient Air Quality Standards (NAAQS) and will reduce emissions compared to traditional pile burning.

The Division performed an air dispersion modeling analysis on December 30, 2003. The analysis is based on the assumption that the air curtain destructors operate no more than 13 hours per day and no more than 110 days per year at a single site. In addition, it is assumed that no more than 20 tons of fuel will be burned per hour. At this level of operation and fuel throughput, the device would be limited to 110 days per year to meet the restriction in the proposed regulation that no more than 100 tons of any criteria pollutant be emitted per year.

Screening level air quality analyses suggest that emissions from air curtain destructors are not expected to cause violations of the carbon monoxide, sulfur dioxide, and nitrogen dioxide ambient air quality standards except in situations where the air curtain destructor is operated next to a nearby source of air pollutants that is already causing high air pollution impacts in an area that, for one reason or another, has poor existing air quality. The analyses suggest it would be prudent to require setbacks in the regulation to prevent public exposure to potentially elevated PM10 levels near the units. The proposed setbacks of 150 feet and 300 feet for short-term versus long-term sites are reasonable except in situations where the air curtain destructor is located near another stationary source of fugitive PM10 emissions. Accordingly, the rule adopted prohibits co-location of an air curtain destructor with another air curtain destructor or any facility that is required to have an air quality permit or any commercial or industrial facility.

The rule adopted contains specific limitations to assure that the devices are operated consistently with the Commission's expectations. The rule adopted allows disposal of wood products generated by projects conducted to reduce the risks of wildfire. The information presented to the Commission did not demonstrate that air curtain destructors are appropriate for disposal of other materials including clean lumber.

V.L. Adopted July 21, 2005

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5, C.R.S.

Basis

Regulation no. 3 sets forth the Air Quality Control Commission’s permitting and air pollutant emission notice programs for stationary sources. The Commission amended Regulation Number 3, Part A, Section V. to make it consistent with the repeal of the Emissions Trading Rule in Regulation Number 5 in December 2004. It was originally anticipated that Regulation Number 5 would replace Part A, Section V. in Regulation Number 3 as the Commission’s trading program, essentially identical to EPA’s. The text of Part A, Section V. was italicized to represent provisions that would remain effective until EPA approved the program in Regulation Number 5. EPA decided not to finalize its trading program; therefore, it would never approve Regulation Number 5 as a SIP component. The Commission deleted Section V.A.3., Part A that contained the outmoded effective date. The Commission also replaced the italicized text with normal font in all of Part A, Section V. to conform the text to these circumstances. In addition, one hazardous air pollutant (2-butoxyethanol) was deleted to conform the State’s list (in appendix b) to the Federal list of hazardous air pollutants.

The Common Provisions Regulation sets forth requirements and definitions that pertain or may pertain to all of the other Commission regulations. EPA added four compounds to its list of compounds (known as non reactive volatile organic compounds) to be excluded from the definition of volatile organic compound on the basis that these compounds make a negligible contribution to tropospheric ozone formation. The Commission adopted a conforming change to the definition of non-reactive volatile organic compounds in the Common Provisions Regulation, Section I.G.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act give the Commission authority to promulgate regulations necessary for the proper implementation of the act. § 25-7-105(12), C.R.S, provides specific authority to establish emission notice, construction permit and operating permit programs. Some of the statutory parameters for these programs are set forth in §§ 25-7-114 through 25-7-114.7 of the act and these sections, in turn, provide statutory authority for the current revisions. Additional authority for these revisions is set forth in §§ 25-7-106, 25-7-119 and 25-7-132, C.R.S. The Commission's adoption of this rule is taken pursuant to procedures set forth in §§ 25-7-105, 25-7-110 and 25-7-110.5, C.R.S.

Purpose

The Commission took into consideration the appropriate items enumerated in § 25-7-109(1)(b), C.R.S.

The purpose of removing the italicized text from Regulation Number3, Part A, Section V. was to prevent any ambiguity about the applicability of those provisions. Changing the font of the text does not have any regulatory impact since the provisions were already in effect and will remain in effect. Section V.A.3. was deleted because it was an outmoded provision that was only necessary if Section V. was to be replaced by Regulation Number 5. The Commission’s repeal of Regulation Number 5 made that provision unnecessary. Removing the italics from Section V. also will eliminate confusion with the italicized text in Part D of Regulation Number 3.

The purpose of the deletion of one hazardous air pollutant in appendix b of Regulation Number 3 and the addition of four non-reactive volatile organic compounds to the list in Section I.G. of the Common Provisions Regulation is to conform the Commission’s rules to Federal regulations. The Federal rule changes were published on November 29, 2004. If the Commission did not make these revisions, the State rules would be more restrictive than the Federal rules because these revisions serve to exempt the compounds from emission standards, monitoring, reporting and record keeping requirements.

V.M. Adopted August 17, 2006

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5, C.R.S.

Basis

On November 29, 2004, EPA revised the federal definition of volatile organic compounds (VOCs) to specifically treat tertiary butyl (t-butyl) acetate as a VOC only for certain purposes, including reporting and photochemical dispersion modeling. The Commission is making corresponding changes to the definition of VOCs in the Common Provisions Regulation, and is adding t-butyl acetate as a non-criteria reportable pollutant in Regulation Number 3, Part A, Appendix B.

Sources of t-butyl acetate will be required to report the pollutant separately from their VOC emissions on an Air Pollutant Emission Notice, and should not count their t-butyl acetate emissions when evaluating compliance with applicable VOC emission limitations. The Division should combine VOC emissions and reported t-butyl acetate emissions when conducting dispersion modeling for sources of t-butyl acetate.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-105, C.R.S., gives the Commission authority to promulgate regulations necessary for the proper implementation of the Act, including rules to assure attainment and maintenance of national Ambient Air Quality Standards and a prevention of significant deterioration program. § 25-7-105(12), C.R.S. provides specific authority to establish emission notice, construction permit and operating permit programs. Some of the statutory parameters for these programs are set forth in §§ 25-7-114 through 25-7-114.7 of the Act and these sections, in turn, provide statutory authority for the current revisions. Additional authority for these revisions is set forth in §§ 25-7-106, 25-7-119 and 25-7-132, C.R.S.

The Commission's adoption of this rule is taken pursuant to procedures and requirements set forth in §§ 25-7-105, 25-7-110 and 25-7-110.5, C.R.S.

Purpose

These revisions will provide clarity for affected sources by maintaining consistency with the federal definition of volatile organic compounds. Further, these revisions include any typographical errors within the regulation.

V.N. Adopted December 15, 2006

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4) and (12.5), C.R.S. for new and revised regulations.

Basis

The Common Provisions Regulation is designed to assist the implementation of more substantive regulatory programs authorized under the Colorado Air Pollution Prevention and Control Act (“Act”) including provisions of the State Implementation Plan addressed in §, 25-7-105(1)(a), C.R.S., emission control regulations addressed in §, 25-7-105(1)(b), C.R.S., prevention of significant deterioration requirements addressed in §, 25-7-105(1)(c), C.R.S., as well as other authorized programs under the Act. The current revisions have been promulgated in order to facilitate this goal. The revisions were proposed by the Air Pollution Control Division based on discussions with EPA and extensive discussions with interested parties regarding the availability of an affirmative defense for upset conditions or malfunctions.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-105(1)(a) authorizes the Commission to adopt rules necessary to implement the Act, and to adopt and revise comprehensive state implementation plans to assure attainment and maintenance of national ambient air quality standards. C.R.S. § 25-7-109 authorizes the Commission to adopt rules that are consistent with state policy regarding air pollution and with federal recommendations and requirements. C.R.S. § 25-7-109(5) requires the Commission to promulgate rules setting conditions and time limitations for periods of startup, shutdown or malfunction or other conditions which justify temporary relief from controls. Additional authority for these revisions is set forth in §, 25-7-106 and 25-7-109, C.R.S.

Purpose

Revisions to Section II.E., regarding upset conditions and malfunctions, were made to clarify the process by which a source must identify an upset or malfunction. The Division has changed the term upset to malfunction for consistency with EPA policy.

In addition, the provision was revised to clarify that an affirmative defense is available to claims for violation of the Commissions' regulations for civil penalties in enforcement actions regarding excess emissions arising from upset conditions and malfunctions. The Commission does not interpret this to mean that every upset should be reported by the Division to EPA as a violation. The affirmative defense is not available to a claim of violation of these regulations in the context of claims for injunctive relief. Sudden and unavoidable upset conditions and malfunctions caused by circumstances beyond the control of an owner or operator occur from time to time despite best efforts regarding planning, design and operational procedures. The upset conditions and malfunction provision recognizes this fact. An affirmative defense may be available to shield a source from civil penalty liability if the owner or operator meets the requirements of the rule. For purposes of II.E.1.J. the Commission does not intend that modeling be done to show that Upsets or malfunctions have or have not caused a violation of the NAAQS.

Section II.E.4 indicates that the affirmative defense does not apply to federally promulgated standards (such as NSPS and NESHAPS requirements). The Commission does not intend this provision to modify those federally promulgated standards or any exemptions for malfunction events that may apply under those standards.

Additionally, the Commission recognizes and intends that certain source permits may not currently adequately accommodate malfunctions as this new rule provides. The Commission intends that the Division work with those specific sources to accommodate malfunctions into their permit limits, as appropriate.

V.O. Adopted December 17, 2009

Revisions to Definitions

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4) and (12.5), C.R.S. for new and revised regulations.

Basis

The Common Provisions Regulation is designed to assist the implementation of more substantive regulatory programs authorized under the Colorado Air Pollution Prevention and Control Act ("Act") including provisions of the State Implementation Plan addressed in §, 25-7-105(1)(a), C.R.S., emission control regulations addressed in §, 25-7-105(1)(b), C.R.S., prevention of significant deterioration requirements addressed in §, 25-7-105(1)(c), C.R.S., as well as other authorized programs under the Act. The current revisions have been promulgated in order to facilitate this goal.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-105(1)(a) authorizes Colorado's Air Quality Control Commission ("Commission") to adopt rules necessary to implement the Act, and to adopt and revise comprehensive state implementation plans to assure attainment and maintenance of national ambient air quality standards. C.R.S. § 25-7-109 authorizes the Commission to adopt rules that are consistent with state policy regarding air pollution and with federal recommendations and requirements. C.R.S.§ 25-7-106(1)(a) authorizes the Commission to adopt definitions of air pollution. Additional authority for these revisions is set forth in §, 25-7-106 and 25-7-109, C.R.S.

Purpose

Revisions to definitions found in Section I.G. were made to be consistent with federal definitions. Specifically, the Commission herein revises the definition of "negligibly reactive volatile organic compound," or NRVOC, and "volatile organic compound," or VOC, set forth in the Common Provisions Regulation to be consistent with the federal definitions found in the Code of Federal Regulations, Title 40, Part 51, § 51.100(s) (July 1, 2009).

Specifically, the Commission adds the following compounds to the definition of "negligibly reactive volatile organic compounds":

(1)1,1,1, 2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300)

Propylene carbonate

Dimethyl carbonate

The Commission adds clarification to the NRVOC definition by adding the common name or chemical structure of currently listed NRVOCs.

The Commission adds clarification to the VOC definition by adding the test methodology references used to determine VOC and NRVOC contents.

Additionally, any identified typographical, grammatical and formatting errors are proposed to be made.

V.P. Adopted October 21, 2010 (Sections I.A., I.F. and I.G.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4) and (12.5), C.R.S. for new and revised regulations.

Basis

The Common Provisions Regulation is designed to assist the implementation of more substantive regulatory programs authorized under the Colorado Air Pollution Prevention and Control Act ("Act") including provisions of the State Implementation Plan (SIP) addressed in C.R.S. § 25-7-105(1)(a), emission control regulations addressed in C.R.S. § 25-7-105(1)(b), prevention of significant deterioration requirements addressed in C.R.S. § 25-7-105(1)(c), regulations as may be necessary and proper for the orderly and effective administration of construction permits and renewable operating permits addressed in C.R.S. § 25-7-114.4(1), as well as other authorized programs under the Act. The current revisions have been promulgated in order to facilitate this goal.

The revisions were proposed by the Air Pollution Control Division based on EPA's GHG Tailoring Rule. On June 3, 2010, EPA promulgated the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule". 75 Federal Register 31514 (June 3, 2010). EPA's GHG Tailoring Rule was designed to tailor the applicability criteria that determine which stationary sources and modification projects become subject to permitting requirements for greenhouse gases (GHGs) under the Prevention of Significant Deterioration (PSD) and Title V Permitting Programs of the Clean Air Act (CAA).

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-105(1)(a) authorizes the Commission to adopt rules necessary to implement the Act, and to adopt and revise comprehensive state implementation plans to assure attainment and maintenance of national ambient air quality standards. C.R.S. § 25-7-109 authorizes the Commission to adopt rules that are consistent with state policy regarding air pollution and with federal recommendations and requirements. C.R.S. § 25-7-109(2) authorizes the Commission to regulate oxides of carbon, oxides of nitrogen and other chemicals, which encompasses the pollutant GHG. Additionally, Colorado is authorized to regulate the pollutant GHG under PSD and Title V in C.R.S. §§ 25-7-103(1.5), 25-7-114(3), 25-7-114.3, and 25-7-201. Additional authority for these revisions is set forth in §§ 25-7-106 and 25-7-109, and 25-7-114 C.R.S.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4), C.R.S. for new and revised regulations.

In order to maintain consistency between state regulations and federally enforceable regulations contained in the SIP, the Commission intends these revisions be adopted into the SIP.

Purpose

The Air Quality Control Commission has adopted revisions throughout the Common Provisions Regulation to address GHG regulation in Colorado.

Common Provisions Proposed Revisions:

The revisions to the Common Provisions as approved by the Commission are summarized:

Revise Applicability section to be consistent with the incorporation by reference section found in Regulation Number 3, Part A, Section I.A. (Section I.A.)

Add GHG and CO2e to list of acronyms (Section I.F.)

Revise definitions of Greenhouse Gas & Carbon Dioxide Equivalent (Section I.G.)

Additionally, the Division proposes revisions to make typographical, grammatical and formatting changes, as necessary.

V.Q. Adopted November 19, 2015 (Definitions and Affirmative Defense)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4) and (12.5), C.R.S. for new and revised regulations

Basis

The Air Quality Control Commission ("AQCC") adopted these revisions to address EPA's June 12, 2015 *State Implementation Plans ["SIPs"]: Response to Petition for Rulemaking; Restatement and Update of EPA's Startup, Shutdown and Malfunction ("SSM") Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction*. *80 Fed. Reg. 33840* ("SSM SIP Call"). EPA's SSM SIP Call, relied in part on *Nat'l Res. Def. Council ("NRDC") v. EPA*, 749 F. 3d 1055, 1062 (D.C. Cir. 2014). Additionally, several administrative revisions were made in order to ensure consistency with federal requirements and provide clarity for affected sources.

Specific Statutory Authority

The statutory authority for these revisions is set forth in the Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-101, et. seq. Specifically, C.R.S. § 25-7-105(1)(a) authorizes the Commission to adopt rules necessary to implement the Clean Air Act ("CAA"), and to adopt and revise comprehensive State Implementation Plans ("SIPs") to assure attainment and maintenance of National Ambient Air Quality Standards ("NAAQS"). Additionally, C.R.S. § 25-7-109(5) requires the Commission to promulgate rules setting conditions and time limitations for periods of startup, shutdown and malfunction ("SSM") or other conditions which justify temporary relief from controls. C.R.S. § 25-7-109 authorizes the Commission to adopt rules that are consistent with state policy regarding air pollution and with federal recommendations and requirements. Additional authority of the Commission to adopt these revisions can be found in C.R.S. §, 25-7-106, which grants the Commission maximum flexibility in developing an effective air quality control program. Lastly, C.R.S. § 25-7-115 addresses state enforcement of violations that occur during SSM events.

Purpose

EPA's June 12, 2015 SSM SIP Call identified a number of states with SIP-approved affirmative defenses for excess emissions during SSM events. With respect to Colorado, the SSM SIP Call found Sections II.E. and II.J. to be substantially inadequate and it established a November 22, 2016 deadline for Colorado to submit corrective SIP revisions.

EPA's final rule differed from the February 22, 2013 proposal (*78 Fed. Reg. 12460*), made in response to a petition for rulemaking filed by the Sierra Club concerning the treatment of excess emissions in state rules during periods of SSM. In that proposal, EPA proposed to partially grant/deny the Sierra Club's petition regarding the SSM provisions in SIPs. With respect to Colorado, EPA proposed that the Section II.J. was inadequate and that Section II.E. was adequate. *78 Fed. Reg. 12529.*

On May 13, 2013, the Division submitted comments supporting EPA's proposed finding of adequacy for Section II.E. and opposing EPA's proposed finding of inadequacy for Section II.J. The Division's opposition to this finding of inadequacy was based in part on the recognition that Sections II.E. and II.J. were agreed upon during a December 15, 2006 rulemaking that incorporated EPA's most recent SSM guidance and resulted in a consensus between the Division, EPA Region 8, environmental groups and industry. EPA approved Sections II.E. and II.J. for incorporation into Colorado's SIP.

Subsequent to the February 22, 2013 proposal, the United States District Court for the District of Colombia invalidated an affirmative defense provision contained in the 2010 National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry, holding that EPA does not have authority under the CAA to adopt affirmative defense provisions that alter the federal courts' authority to impose penalties. *See NRDC v. EPA*. 749 F. 3d at 1055. The court reasoned the federal CAA gives the courts exclusive authority to determine and impose appropriate penalties for violations under the federal CAA, and EPA's adoption of affirmative defense provisions impermissibly intruded upon this authority. Notably, the D.C. Circuit in the *NRDC* decision clarified that it was not confronting the question of whether affirmative defense provisions in state implementation plans are appropriate.

Based on EPA's revised interpretation of the CAA stemming from the court's decision in *NRDC v. EPA*, the SSM SIP Call maintained that both Sections II.E. and II.J. interfered with the intended enforcement structure of the CAA, through which parties may seek to bring enforcement actions for violations of SIP emission limits. *80 Fed. Reg. 33970*. The SSM SIP Call afforded states broad discretion concerning how to revise inadequate SIP provisions. *80 Fed. Reg. 33844*. Additionally, the SSM SIP Call clarified that, existing inadequate SIP provisions would remain in effect until such time as EPA evaluated and acted upon a state's SIP submission. *80 Fed. Reg. 33849.*

Thus, in order to comply with the SSM SIP Call, the Commission revised Sections II.E. and II.J. by adding Sections II.E.4. and II.J.4. to clarify that the affirmative defenses are not available in federal court proceedings unless the court, in considering the penalty factors in Section 113 of the CAA and exercising its discretion to assess civil penalties, decides to recognize or consider such affirmative defense or decides to take into consideration some or all of the factors described in Sections II.E. and II.J. The Commission added this reference to CAA Section 113 to clarify that the Commission's proposed revisions complement, rather than contradict, the requirements of CAA Section 113 because a federal court can, in its discretion, consider an affirmative defense or the factors contained in Sections II.E. and II.J. in conjunction with the factors described in CAA Section 113. The Commission also added Sections II.E.6. and II.J.7. to indicate nothing in Sections II.E. and II.J, precludes the use of alternative emission limitations expressed as work-practice based limits or standards set forth in a permit that serve as a continuous limitation during periods of SSM. Lastly, the Commission included language at the beginning of Sections II.E. and II.J. to indicate that the proposed revisions do not take effect until such time as EPA approves the language for incorporation into Colorado's SIP.

In revising Sections II.E. and II.J. as described in the preceding paragraph, the Commission acknowledged that, as of November 19, 2015, several lawsuits challenging the validity of the SSM SIP Call were pending. Given the legal uncertainty surrounding the SSM SIP Call, the Commission opted to postpone submitting these revisions until November 2016 (the deadline for SIP submissions outlined in the SSM SIP Call is November 22, 2016), so that Colorado's submittal would be considered at the same time as other state SIP submittals.

The Commission determined, after considering the statutory directives of the Air Pollution Prevention and Control Act, along with the positions set forth in the stakeholder process and associated rulemaking proceeding, the revisions being proposed in Sections II.E.4. and II.J.4. are the most balanced and appropriate approach for Colorado. The proposed language accurately responds to the SSM SIP Call while being narrowly tailored so as to not make changes beyond those required by the *NRDC* court's holding.

The proposed revisions upheld many of the tenets of the December 15, 2006 consensus rulemaking that originally inserted Sections II.E. and II.J. into the Common Provisions Regulation, including the requirements that sources notify the Division of excess emissions that occur during SSM and undertake all reasonably possible steps to minimize the amount and duration of excess emissions during SSM as well as their impacts on ambient air quality. No other rules of the Commission include these notification requirements.

In addition to the revisions to Sections II.E. and II.J., the following administrative revisions were made to Section I.G. in order to ensure consistency with federal requirements and provide clarity for affected sources: definitions were added for "Responsible Official," "Designated Representative," "PM2.5" and "Direct PM2.5 Emissions"; the incorporation date for the definition of "Carbon Dioxide Equivalent" was updated; several compounds were added to the list of Negligibly Reactive Volatile Organic Compounds ("NRVOCs") based on EPA's determination that these compounds make a negligible contribution to tropospheric ozone formation.

Further, these revisions will include any typographical, grammatical and formatting errors throughout the regulation.

V.R. Adopted: October 21, 2021

Revisions to Common Provisions Regulation, Section III.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act §§ 25-7-110 and 25-7-110.5, C.R.S. ("the Act").

Basis

During the 2020 legislative session, Colorado's General Assembly adopted HB 20-1143 (Concerning additional public health protections regarding alleged environmental violations, and, in connection therewith, raising the maximum fines for air quality and water quality violations), revising § 25-7-122, C.R.S. HB 20-1143 increased the maximum civil penalty for most air violations to $47,357 per day for each day of the violation. It directs the Commission to "annually adjust the amount of the maximum civil penalty based on the percentage change in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index."

The Commission adopted revisions to Common Provisions Regulation, Section III. Specifically, the Commission adopted revisions to increase the maximum civil penalty from $47,357 to $49,020 per day for each day of the violation.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-122 requires the Commission to annually adjust the maximum civil penalty amount.

Purpose

The Commission adopted revisions to Common Provisions, Section III. to comply with the requirement in § 25-7-122 to annually adjust the maximum civil penalty for most air violations based on the percentage change in the Consumer Price Index for Denver-Aurora-Lakewood for all items and all urban consumers (CPI). The annual adjustment is based on the percentage by which the CPI for July of the current year exceeds the CPI for July of the previous year.

The new maximum penalty effective January 1, 2022 was determined as follows:

Percentage change in the CPI from July 2020 to July 2021 = 3.512% = ((285.268-275.589)/275.589) x 1003.512% = 0.03512

Change in maximum penalty amount = $1,663 = $47,357 x 0.03512

New maximum penalty effective January 1, 2022 = $49,020 = $47,357 + $1,663

The Commission did not change the maximum civil penalty for violations of § 25-7-114.1 (Air Pollutant Emission Notices). Additionally, the Commission did not change the maximum civil penalty for the gasoline dispensing facility violations described in § 25-7-122(1)(f)(g).

The revisions also correct any typographical, grammatical, and formatting errors found throughout the regulation.

V.S. Adopted: December 16, 2022 (Revisions to Sections I.G., II.E., II.J., and III.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103, C.R.S., the Colorado Air Pollution Prevention and Control Act §§ 25-7-110 and 25-7-110.5, C.R.S., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 Code Colo. Reg. § 1001-1.

Basis

In 2015, EPA published the SSM SIP Call (State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's Startup, Shutdown and Malfunction (SSM) Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction. June 12, 2015. 80 Fed. Reg. 33840) finding that Colorado, among other states, included provisions in the state implementation plan (SIP) that impermissibly provided for affirmative defenses from continuous compliance with applicable emission limitations. The Commission adopted revisions to Sections II.E. and II.J. to address the concerns over federal court authority in 2015. However, the revisions did not fully remove from Colorado's SIP the affirmative defense provisions. EPA's SSM SIP Call has undergone legal challenge since 2015 and the federal administration is again interpreting the federal Clean Air Act (CAA) to prohibit automatic exemptions from otherwise applicable emission limitations, affirmative defense provisions operating to limit a court's jurisdiction or discretion, and limitations on court or EPA jurisdiction to determine what monetary penalties are appropriate in the event of enforcement for violation of a SIP provision. EPA interprets the enforcement structure of the CAA to preclude any affirmative defense provisions that would operate to limit a federal court's jurisdiction or discretion to determine the appropriate remedy in an enforcement action. EPA also interprets the CAA to require that emission limitations must apply continuously and cannot contain exemptions, conditional or otherwise. However, EPA also interprets the CAA to allow states to include in SIPs alternative emission limitations expressed as work-practice based limits or standards during periods of SSM. Therefore, the Commission adopted revisions to Sections II.E. and II.J. to remove the affirmative defense provisions from the SIP and retain the provisions on a state only basis.

During the 2020 legislative session, Colorado's General Assembly adopted HB 20-1143 (Concerning additional public health protections regarding alleged environmental violations, and, in connection therewith, raising the maximum fines for air quality and water quality violations), revising § 25-7-122, C.R.S. HB 20-1143 increased the maximum civil penalty for most air violations to $47,357 per day for each day of the violation. It directs the Commission to "annually adjust the amount of the maximum civil penalty based on the percentage change in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index." In 2021, the Commission adopted revisions to Section III. to increase the maximum civil penalty per day for each day of the violation. In this rulemaking, the Commission adopted the annual increase as directed in § 25-7-122.

Specific Statutory Authority

The statutory authority for these revisions is set forth in the Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-101, et. seq. Specifically, Section 25-7-105(1)(a) authorizes the Commission to adopt rules necessary to implement the Clean Air Act, and to adopt and revise comprehensive State Implementation Plans to assure attainment and maintenance of National Ambient Air Quality Standards. Section 25-7-109(5) requires the Commission to promulgate rules setting conditions and time limitations for periods of startup, shutdown and malfunction (SSM) or other conditions which justify temporary relief from controls. Section 25-7-109 authorizes the Commission to adopt rules that are consistent with state policy regarding air pollution and with federal recommendations and requirements. Section 25-7-106 grants the Commission maximum flexibility in developing an effective air quality control program. Section 25-7-115 addresses state enforcement of violations that occur during SSM events. Section 25-7-122 requires the Commission to annually adjust the maximum civil penalty amount.

Purpose

The Commission is withdrawing the 2016 SIP revisions to sections II.E. and II.J. of the Common Provisions and is delaying the effective date of this change to June 1, 2024 to provide time for the Division to work with all interested stakeholders to establish alternative emission limits that would apply during startup, shutdown or malfunction events.

The Commission adopted revisions to Sections II.E. and II.J. to address EPA's SSM SIP Call and remove the affirmative defense provisions from the SIP while retaining the provisions on a state only basis. The state only affirmative defense is not binding on EPA or a federal court, although a federal court and EPA may exercise discretion to consider the affirmative defense factors. Retention of the affirmative defense provisions on a state only basis also does not preclude the use of alternative emission limitations expressed as work practices in a source's permit to serve as a continuous limitation during periods of startup, shutdown, or malfunction. The Commission expects that the Division will have ongoing, future discussions with sources, source categories, industry trade representatives, and other interested stakeholders concerning the development of conditions and time limitations for periods of start-up, shutdown, and malfunction, as needed. Discussions with stakeholders should consider, among other things, approaches to minimize emissions during SSM periods through the application of practicable process controls, work practices, time limitations, and/or other measures as may be appropriate. To give the Division time to begin these discussions while still providing sources some protection under the affirmative defense, the Commission is withdrawing the 2016 SIP revisions to sections II.E. and II.J. of the Common Provisions and is delaying the effective date of this change to June 1, 2024.

The Commission adopted revisions Section III. to comply with the requirement in § 25-7-122 to annually adjust the maximum civil penalty for most air violations based on the percentage change in the Consumer Price Index for Denver-Aurora-Lakewood for all items and all urban consumers (CPI). The annual adjustment is based on the percentage by which the CPI for July of the current year exceeds the CPI for July of the previous year.

The new maximum penalty effective February 14, 2023, was determined as follows:

Percentage change in the CPI from July 2021 to July 2022 = 8.224% = ((308.728-285.268)/285.268) = 0.08224

Change in maximum penalty amount = $4,031 = $49,020 x 0.08224

New maximum penalty effective February 14, 2023, = $53,051 = $49,020 + $4,031

The revisions also correct any typographical, grammatical, and formatting errors found throughout the regulation.

Incorporation by Reference

Section 24-4-103(12.5) of the State Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of Section 24-4-103(12.5) are met by including specific information and making the regulations available because repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. To fully comply with these criteria, the Commission includes reference dates to rules and reference methods incorporated in the Common Provisions, Section I.G.

Additional Considerations

The revisions to the Common Provisions concerning the civil penalty and affirmative defenses do not exceed or differ from the requirements of the federal act or rules. Therefore, § 25-7-110.5(5)(a) does not apply.

Findings of Fact

To the extent that § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of greenhouse gas and VOC emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective alternative to achieve the necessary reduction in air pollution and provide the regulated entity flexibility.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

V.T. Adopted: October 19, 2023

Revisions to Common Provisions Regulation, Section III.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act § 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act §§ 25-7-110 and 25-7-110.5, C.R.S. (“the Act”).

Basis

During the 2020 legislative session, Colorado’s General Assembly adopted HB 20-1143 (Concerning additional public health protections regarding alleged environmental violations, and, in connection therewith, raising the maximum fines for air quality and water quality violations), revising § 25-7-122, C.R.S. HB 20-1143 increased the maximum civil penalty for most air violations to $47,357 per day for each day of the violation. It directs the Commission to “annually adjust the amount of the maximum civil penalty based on the percentage change in the United States Department of Labor’s Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index.”

The Commission adopted revisions to Common Provisions Regulation, Section III. Specifically, the Commission adopted revisions to increase the maximum civil penalty from $53,051 to $55,554 per day for each day of the violation.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-122 requires the Commission to annually adjust the maximum civil penalty amount.

Purpose

The Commission adopted revisions to Common Provisions, Section III to comply with the requirement in § 25-7-122 to annually adjust the maximum civil penalty for most air violations based on the percentage change in the Consumer Price Index for Denver-Aurora-Lakewood for all items and all urban consumers (CPI). The annual adjustment is based on the percentage by which the CPI for July of the current year exceeds the CPI for July of the previous year.

The new maximum penalty effective January 1, 2024 was determined as follows:

Percentage change in the CPI from July 2022 to July 2023 = 4.719% = ((323.298-308.728)/308.728) x 100

Change in maximum penalty amount = $2,503

New maximum penalty effective January 1, 2024 = $55,554 = $53,051 + $2,503

The revisions also correct any typographical, grammatical, and formatting errors found throughout the regulation.

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Office of the Attorney General

Tracking number: 2023-00416

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

Air Quality Control Commission

on 10/19/2023

5 CCR 1001-2

COMMON PROVISIONS REGULATION

The above-referenced rules were submitted to this office on 10/26/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 06, 2023 11:18:58

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-24

Rule title

5 CCR 1001-24 REGULATION NUMBER 20 COLORADO LOW EMISSION AUTOMOBILE REGULATION 1 - eff 12/15/2023

Effective date

12/15/2023

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 20

Colorado Clean Cars and Trucks Regulation

5 CCR 1001-24

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

Outline of Regulation

PART A GENERAL PROVISIONS, DEFINITIONS, AND SEVERABILITY

I. General Provisions

I.A. All provisions of this regulation apply throughout the State of Colorado.

I.B. Part B of this regulation applies to all 2022 through 2025 and 2027 through 2032 model year motor vehicles that are Passenger Cars and Light-Duty Trucks, motor vehicle engines; to all 2022 and subsequent model year motor vehicles which are Medium-Duty Passenger Vehicles, Medium-Duty Vehicles, or motor vehicle engines offered for sale or lease, or sold, or leased for registration in Colorado.

I.C. The provisions of Part B of this regulation also apply to all 2022 through 2025 and 2027 through 2032 model year motor vehicles sold or leased to the United States government or an agency thereof, or to the State of Colorado or any agency or political subdivision thereof that would be registered or required to be registered in the State.

I.D. Part C of this regulation applies to all Aftermarket Catalytic Converters for any model year vehicle that is powered by a spark-ignition engine and has a gross vehicle weight rating of less than 14,001 lbs. Part C of this regulation is effective beginning January 1, 2021.

I.E. Part D of this regulation applies to 2023 thru 2025 model year and 2027 through 2032 model year motor vehicles. Beginning with the 2023 and 2027 model year, a percentage of each manufacturer's passenger cars and light-duty trucks offered for sale in the State of Colorado shall be Zero Emission Vehicles.

I.F. The provisions of Part D of this regulation also apply to 2023 through 2025 model year and 2027 through 2032 model year motor vehicles sold or leased to the United States government or an agency thereof, or to the State of Colorado or any agency or political subdivision thereof that would be registered or required to be registered in the State.

I.G. Part E of this regulation applies to all 2027 and subsequent model year motor vehicles and engines of GVWR 14,001 pounds and above that are offered for sale or lease, or sold, or leased for registration in Colorado.

I.H. Part F of this regulation applies to all 2027 and subsequent model year motor vehicles and engines of GVWR 8,501 pounds and above that are offered for sale or lease, or sold, or leased for registration in Colorado.

I.I. This regulation is a state-only regulation and is not contained in any State Implementation Plan.

II. Definitions

II.A. *Aftermarket Catalytic Converter* means a catalytic converter not designed and built to perform exactly as the original equipment manufacturer catalytic converter.

II.B. *Authorized Emergency Vehicle* or *Emergency Vehicle* means such vehicles of the fire department, police vehicles, ambulances, and other special-purpose vehicles as are publicly owned and operated by or for a governmental agency to protect and preserve life and property in accordance with state laws regulating Emergency Vehicles; said term also means the following if equipped and operated as Emergency Vehicles in the manner prescribed by state law:

II.B.1. Privately owned vehicles as are designated by the state motor vehicle licensing agency necessary to the preservation of life and property; and

II.B.2. Privately owned tow trucks approved by the public utilities commission to respond to vehicle emergencies.

II.C. *Auxiliary power unit or APU* means any device that provides electrical or mechanical energy, meeting the requirements of California Code of Regulations, Title 13, Section 1962.2(c)(2), to a BEVx, after the zero emission range has been fully depleted. A fuel fired heater does not qualify under this definition for an APU.

II.D. *CARB* means the California Air Resources Board as defined in California's Health and Safety Code, Section 39003.

II.E. *California credit ratio* means the ratio of the average number of passenger cars and light-duty trucks that a manufacturer produced and delivered for sale in Colorado to the average number of passenger cars or light-duty trucks the manufacturer produced and delivered for sale in California.

II.F. *Community-Based Clean Mobility Program* means a program that: 1) provides access to clean mobility solutions other than vehicle ownership including ZEV car sharing, ride-sharing, vanpools, ride-hailing, or on-demand first-mile/last-mile services; 2) serves a disproportionately impacted community, as defined in Colorado by § 24-4-109(2)(b)(II), C.R.S. (2023), or a tribal community regardless of federal recognition; and 3) is implemented by a community-based organization; Native American Tribal government regardless of federal recognition; or a public agency or nonprofit organization that has received a letter of support from a project-related community-based organization or local community group that represents community members that will be impacted by the project or has a service background related to the type of project. Qualifying programs in Colorado will be approved by the Department and posted on the Department designated website.

II.G. *Department* means the Colorado Department of Public Health and Environment (CDPHE).

II.H. *Emissions Control System* means equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine, or a system or engine modification on a motor vehicle or motor vehicle engine which causes a reduction of air contaminants emitted from the motor vehicle or motor vehicle engine, including but not limited to exhaust control systems, fuel evaporation control systems and crankcase ventilating systems.

II.I. *Executive Officer* means the Executive Director of the Colorado Department of Public Health and Environment, unless the context requires otherwise.

II.J *Financial assistance program* means a vehicle purchase incentive program where approved dealerships accept a point-of-sale incentive for used ZEVs and PHEVs for lower-income consumers. Qualifying programs in Colorado will be approved by the Department and posted on the Department designated website.

II.K. *Greenhouse Gas or GHG* means the following gases: carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons.

II.L. *Heavy-Duty Engine* means an engine which is used to propel a heavy-duty vehicle.

II.M. *Heavy-Duty Vehicle* means any motor vehicle having a manufacturer's gross vehicle weight rating greater than 8,500 pounds, except passenger cars.

II.N. *Light-Duty Truck* means any motor vehicle certified to the standards in California Code of Regulations, Title 13, Section 1961(a)(1) or 1961.2 rated at 8,500 pounds' gross vehicle weight or less, and any other motor vehicle, rated at 6,000 pounds' gross vehicle weight or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.

II.O. *Medium-Duty Passenger Vehicle* means any medium-duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The Medium-Duty Passenger Vehicle definition does not include any vehicle which: (1) is an "incomplete truck" i.e., is a truck that does not have the primary load carrying device or container attached; or (2) has a seating capacity of more than 12 persons; or (3) is designed for more than 9 persons in seating rearward of the driver's seat; or (4) is equipped with an open cargo area of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area, for purposes of this definition.

II.P. *Medium-Duty Vehicle* means any heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in California Code of Regulations, Title 13, Section 1961.2 or 1956.8(h) having a manufacturer's gross vehicle weight rating between 8,501 and 14,000 pounds.

II.Q. *Military Tactical Vehicles and Equipment* means all land combat and transportation vehicles, excluding rail-based, which are designed for and are in use by any of the United States armed forces, or in use as an Authorized Emergency Vehicle by or for a governmental agency.

II.R. *Neighborhood Electric Vehicle or NEV* means a motor vehicle that meets the definition of Low-Speed Vehicle either in the California Vehicle Code Division 1 VEH Section 385.5, or in 49 CFR 571.500 (as it existed on July 1, 2000), and is certified to Zero Emission Vehicle standards.

II.S. *New Motor Vehicle* for purposes of this regulation means a 2022 model year or later motor vehicle that has accumulated less than 7500 miles of use as of the date of sale or lease.

II.T *NZEV* shall have the same meaning as the term "near-zero-emission vehicle" as defined at California Code of Regulation Title 13 CCR Section 1963(c).

II.U. *Passenger Car* means any motor vehicle designed primarily for transportation of persons and having a design capacity of twelve persons or less.

II.V. *Person* means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock companies, and shall also include, without limitation, all political subdivisions of any states, and any agencies or instrumentalities thereof.

II.W. *Range Extended Battery Electric Vehicle or BEVx* means a vehicle powered predominantly by a zero emission energy storage device, able to drive the vehicle for more than 75 all-electric miles, and also equipped with a backup Auxiliary Power Unit APU), which does not operate until the energy storage device is fully depleted, and meeting requirements in California Code of Regulations, Title 13, Section 1962.2(d)(5)(G).

II.X. *Transitional zero emission vehicle or "TZEV"* means a vehicle that meets all the criteria of California Code of Regulations, Title 13, Section 1962.2(c)(2) and qualifies for an allowance in California Code of Regulations, Title 13, Section 1962.2(c)(3)(A) or (E).

II.Y *Ultimate Purchaser* means, with respect to any vehicle, the first person who in good faith purchases a new motor vehicle for purposes other than resale and registers it with the Colorado Department of Motor Vehicle.

II.Z. *Used Motor Vehicle* means a 2022 model year or later motor vehicle that has accumulated 7500 miles or more of use as of the date of sale or lease.

II.AA. *Zero emission vehicle or "ZEV"* means a vehicle that produces zero or near-zero exhaust emissions of any criteria pollutant (or precursor pollutant) or greenhouse gas under any possible operational modes or conditions.

III. Severability

Each provision of this regulation shall be deemed severable, and in the event that any provision of this regulation is held to be invalid, the remainder of this regulation shall continue in full force and effect.

IV. Future Rulemakings

By no later than July 31, 2029, the Division shall submit a petition for rulemaking to the Air Quality Control Commission proposing to update Parts B and D of Regulation Number 20 with emission standards for model year 2033 and subsequent model year motor vehicles.

PART B LOW EMISSION VEHICLES (LEV)

I. Applicability

I.A. Low Emissions Vehicle Sales

I.A.1. It is unlawful for any person to sell or register, offer for sale or lease, import, deliver, purchase, lease, acquire or receive a 2022 through 2025 model year new Passenger Car, or a Light-Duty Truck, Medium-Duty Passenger Vehicle, or a Medium-Duty Vehicle; new light- or medium-duty motor vehicle engine or motor vehicle with a New Motor Vehicle engine in the State of Colorado which is not certified to California Code of Regulations, Title 13, Sections 1961.2 ("LEV III Criteria emissions") and 1961.3 ("GHG emissions") and meets all other applicable requirements of California Code of Regulations, Title 13, Sections 1900, 1956.8(h), 1965, 1968.2, 1976, 1978, 2035, 2037 through 2041, 2046, 2062, 2109, 2111 through 2121, 2122 through 2135, 2139, 2141 through 2149, and 2222(h) and (i), unless the vehicle is sold to another dealer, sold for the purpose of being wrecked or dismantled, sold exclusively for off-highway use or sold for registration out of state. Vehicles that have been certified to standards promulgated pursuant to the authority contained in 42 U.S.C. Section 7521 (November 15, 1990) and that are in the possession of a rental agency in Colorado that are next rented with a final destination outside of Colorado will not be deemed as being in violation of this prohibition.

I.A.2. It is unlawful for any person to sell or register, offer for sale or lease, import, deliver, purchase, lease, acquire or receive a 2027 through 2032 model year new Passenger Car, or a Light-Duty Truck, Medium-Duty Passenger Vehicle, or a Medium-Duty Vehicle; new light- or medium-duty motor vehicle engine or motor vehicle with a New Motor Vehicle engine in the State of Colorado which is not certified to California Code of Regulations, Title 13, Sections 1961.4 ("LEV IV Criteria emissions") and 1961.3 ("GHG emissions") and meets all other applicable requirements of California Code of Regulations, Title 13, Sections 1900, 1956.8(h), 1965, 1968.2, 1969, 1976, 1978, 2035, 2037 through 2041, 2046, 2062, 2109, 2111 through 2121, 2122 through 2135, 2139, 2141 through 2149, and 2222(h) and (i), unless the vehicle is sold to another dealer, sold for the purpose of being wrecked or dismantled, sold exclusively for off-highway use or sold for registration out of state. Vehicles that have been certified to standards promulgated pursuant to the authority contained in 42 U.S.C. Section 7521 (November 15, 1990) and that are in the possession of a rental agency in Colorado that are next rented with a final destination outside of Colorado will not be deemed as being in violation of this prohibition.

I.B. Exceptions - This regulation does not apply to:

I.B.1. A vehicle acquired by a resident of this State for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this State; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen; or

I.B.2. A vehicle transferred by inheritance; or

I.B.3. A vehicle transferred by court decree; or

I.B.4. Any vehicle sold after the effective date of this regulation if the vehicle was registered in this State before such effective date; or

I.B.5. Any motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. Section 7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this State and who upon registration of the vehicle in this State provides satisfactory evidence to the Department of Revenue or its assigned designee of the previous residence and registration; or

I.B.6. A Used Motor Vehicle (7500 or more miles accumulated): or

I.B.7. Authorized Emergency Vehicles; or

I.B.8. Military Tactical Vehicles and Equipment.

I.C. Transfer to ultimate purchaser - For purposes of this regulation, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

I.D. No Conversion - In accordance with 42 U.S.C. Section 7507 under no circumstances will a Colorado action require the conversion of a vehicle to a standard different from that to which it is certified for sale in California.

II. Certification Testing

II.A. Assembly-line quality audit emission testing and reporting shall be performed for 2022 and subsequent model years.

III.A.1. All manufacturers of new motor vehicles subject to this regulation produced and delivered for sale in Colorado shall conduct inspection testing in accordance with California Code of Regulations, Title 13, Section 2062.

III.A.2. The Department shall accept the results of quality audit testing and inspection testing determinations and findings made by CARB.

II.B. Remedial action plans for model year 2022 and subsequent model years are required. If the State of California requires a remedial action plan based upon full calendar or partial calendar quarter testing, under the California Code of Regulations, Title 13, Section 2109, such plan will apply to all vehicles certified to the California standards intended for sale in Colorado. Such plan will not apply to vehicles that have previously been sold to ultimate purchasers in Colorado.

III. Fleet Average Emissions

III.A. For each model year, manufacturers of Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles produced and delivered for sale in Colorado shall not exceed the fleet average non-methane organic gas plus oxides of nitrogen emission values as set forth in California Code of Regulations, Title 13, Section 1961.2. Credits and debits may be accrued and utilized based upon each manufacturer's sales of vehicles subject to this regulation in Colorado, pursuant to the provisions set forth in California Code of Regulations, Title 13, Section 1961.2(c).

III.B. For each model year, manufacturers of Passenger Cars, Light-Duty Trucks and Medium-Duty Passenger Vehicles produced and delivered for sale in Colorado shall not exceed the fleet average greenhouse gas exhaust emission levels set forth in California Code of Regulations, Title 13, Section 1961.3. For each model year, manufacturers of Medium-Duty Vehicles produced and delivered for sale or lease in Colorado shall not exceed the CO2 emission standards set forth in California Code of Regulations, Title 13, Section 1956.8 (h)(6). Credits and debits may be accrued and utilized based upon each manufacturer's sales of vehicles subject to this Rule in Colorado, pursuant to the provisions set forth in California Code of Regulations, Title 13, Section 1961.3.

III.C. For 2027 through 2032 model year, manufacturers of Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles produced and delivered for sale in Colorado shall not exceed the fleet average non-methane organic gas plus oxides of nitrogen emission values as set forth in California Code of Regulations, Title 13, Section 1961.4. Credits and debits may be accrued and utilized based upon each manufacturer's sales of vehicles subject to this regulation in Colorado, pursuant to the provisions set forth in California Code of Regulations, Title 13, Section 1961.4(d).

IV. Reporting Requirements

IV.A. Certification Reporting

For the purposes of determining compliance with this regulation, the Department may require any vehicle manufacturer subject to this regulation to submit any documentation the Department deems necessary to the effective administration and enforcement of this regulation including, but not limited to all certification materials submitted to CARB.

IV.B. Fleet average reporting

IV.B.1. For 2022 through 2025 model year, each manufacturer must report to the Department using the same format used to report this information to CARB, the fleet average non-methane organic gas plus oxides of nitrogen pollutant and greenhouse gas emissions of its fleet delivered for sale in Colorado. If the "*Pooling Provision*" option number two in the California Code of Regulations, Title 13, Section 1961.2 is chosen, or the "*Calculation of Fleet Average Carbon Dioxide Value*" option number two in California Code of Regulations, Title 13, Section 1961.3 (5)(D) is chosen, manufacturers must report the data for the entire pool as well as the Colorado specific portion. Non-methane organic gas plus oxides of nitrogen reports must be submitted to the Department by no later than March 1 of the calendar year succeeding the end of the model year. Carbon dioxide reports must be submitted to the Department by no later than May 1 of the calendar year succeeding the end of the model year.

IV.B.2. Effective 2027 model year and in each subsequent model year through 2032 model year, each manufacturer must report to the Department using the same format used to report this information to CARB, the fleet average non-methane organic gas plus oxides of nitrogen pollutant and greenhouse gas emissions of its fleet delivered for sale in Colorado. If the "*Pooling Provision*" option number two in the California Code of Regulations, Title 13, Section 1961.4 is chosen, or the "*Calculation of Fleet Average Carbon Dioxide Value*" option number two in California Code of Regulations, Title 13, Section 1961.3(5)(D) is chosen, manufacturers must report the data for the entire pool as well as the Colorado specific portion. Non-methane organic gas plus oxides of nitrogen reports must be submitted to the Department by no later than March 1 of the calendar year succeeding the end of the model year. Carbon dioxide reports must be submitted to the Department by no later than May 1 of the calendar year succeeding the end of the model year.

IV.C. Assembly line testing reporting

Upon request by the Department, for 2022 through 2025 model year and 2027 through 2032 model year, vehicle manufacturers are required to provide reports on all assembly-line emission testing and functional test results collected as a result of compliance with this regulation and California Code of Regulations, Title 13, Section 2062. Reports must be provided to the Department or to the Department's designee.

IV.D. Warranty Reporting

Upon request by the Department, for 2022 through 2025 model year and 2027 through 2032 model year , each manufacturer shall submit warranty claim reports submitted to CARB to the Department as required by California Code of Regulations, Title 13, Sections 2141 through 2149.

IV.E. Recall Reporting

Upon request by the Department, for 2022 through 2025 model year and 2027 through 2032 model year, each manufacturer shall submit recall plans and progress reports submitted to CARB to the Department, using the same format and information as required by California Code of Regulations, Title 13, Sections 2119 and 2133.

V. Surveillance and Enforcement

V.A. Surveillance of motor vehicle dealers.

V.A.1. For the purpose of enforcing or administering any Federal or State law, order, regulation, or rule relating to vehicular sources of emissions, the Department or an authorized representative of the Department of Revenue, has the right of entry for the purpose of inspecting any 2022 through 2025 model year and 2027 through 2032 model year vehicles to any premises owned, operated, used, leased, or rented by any new or used car dealer.

V.A.2. Nothing in Section V. or elsewhere in this regulation is intended to limit the Department's authority to enter and inspect pursuant to 25-7-111, C.R.S, effective June 3, 2009.

V.B. Enforcement

V.B.1. For the purpose of developing the provisions of this regulation, any person subject to the provisions of this regulation must, upon oral or written request of any authorized officer or employee or designee of the Department, when properly identified and duly designated, furnish or permit such officer or employee or designee at all reasonable times to have access to, and to copy all records relating to those vehicles which are subject to this regulation.

V.B.2. Unless otherwise specified, any person subject to the provisions of this regulation must retain all relevant records for at least three years from the creation of those records. Such records will be provided to the Department upon its request.

V.C. Fleet average enforcement

V.C.1. If the report issued by a manufacturer under Section IV.B. of this regulation demonstrates noncompliance with the fleet average contained in this regulation during a model year, the manufacturer must within 60 days' file a fleet average enforcement report with the Department documenting such noncompliance. Fleet average enforcement reports must identify all vehicle models delivered for sale or lease in Colorado and their corresponding certification standards and the percentage of each model delivered for sale in Colorado and California in relation to total fleet sales in the respective state.

VI. Emission Control System Warranty and Recall Requirements

VI.A. Emissions control system warranty requirements - For all 2022 through 2025 model year and 2027 through 2032 model year Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, and motor vehicle engines subject to this regulation, each manufacturer shall provide defect warranty coverage. For vehicles registered or principally operated in the Front Range AIR Program area, performance warranty coverage that complies with California Code of Regulations, Title 13, Sections 2035, 2037 through 2041, and 2046 shall apply.

VI.B. Recalls - For all 2022 through 2025 model year and 2027 through 2032 model year Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, and motor vehicle engines subject to recall in California, each manufacturer shall undertake recall campaigns in Colorado pursuant to California Code of Regulations, Title 13, Sections 2111 through 2121 and 2122 through 2135, unless the manufacturer demonstrates to the Department that such recall is not applicable to vehicles registered in Colorado.

VII. Environmental Performance Labels

VII.A. It is unlawful for any person to sell or register, offer for sale or lease, import, deliver, purchase, rent, lease, acquire, or receive a 2022 through 2025 model year and 2027 through 2032 model year new Passenger Car, Light-Duty Truck, Medium-Duty Passenger Vehicle, or Medium-Duty Vehicle in Colorado to which emissions control labels and environmental performance labels have not been affixed pursuant to the requirements of California Code of Regulations, Title 13, Section 1965.

PART C AFTERMARKET EXHAUST TREATMENT DEVICES

I. Applicability

Effective January 1, 2021, this regulation applies to all Aftermarket Catalytic Converters that are sold, offered for sale, or advertised for sale or use in Colorado on any model year vehicle that is powered by a spark-ignition engine and has a gross vehicle weight rating of less than 14,001 lbs.

II. Prohibition

II.A. It is unlawful for any person to install, sell, offer for sale, or advertise any Aftermarket Catalytic Converter intended for use on any motor vehicle originally equipped with catalytic converter(s) in Colorado unless it has been exempted pursuant to the requirements of California Code of Regulations, Title 13, Section 2222 (h) (i.e. a “California Aftermarket Catalytic Converter”).

II.B. It is unlawful for any person to install, sell, offer for sale, or advertise any used, recycled, or salvaged catalytic converter in Colorado pursuant to the requirements of California Code of Regulations, Title 13, Section 2222 (h) and (i).

PART D ZERO EMISSION VEHICLES (ZEV)

I. Applicability

I.A Effective 2023 through 2025 model year, each manufacturer’s sales fleet of passenger cars and light-duty trucks in the State of Colorado shall be subjected to the ZEV credit percentage requirements in California Code of Regulations, Title 13, Section 1962.2 which is incorporated by reference.

I.B. Effective 2027 through 2032 model year, each manufacturer's sales fleet of passenger cars and light-duty trucks in the State of Colorado shall be subjected to the ZEV credit percentage requirements in California Code of Regulations, Title 13, Section 1962.4, which is incorporated by reference.

I.C. Effective 2027 through 2032 model year, this Part D applies to zero-emission medium-duty vehicles produced and delivered for sale in Colorado that the manufacturer optionally chooses to certify to the provisions of this Part D and the neighborhood electric vehicles (NEVs) produced and delivered for sale in Colorado.

II. Emission Standard

II.A Certification for ZEV Emission Standards of new 2023 through 2025 model year passenger cars, light-duty trucks and medium-duty vehicles shall be made pursuant to California Code of Regulations, Title 13, Section 1962.2. Medium-duty vehicles shall not be required to meet the ZEV requirement, but if a manufacturer opts to produce medium-duty ZEV's, that manufacturer may earn and expend ZEV credit for those vehicles.

II.B. Certification for ZEV Emission Standards of new 2027 through 2032 model year passenger cars, light-duty trucks and medium-duty vehicles shall be made pursuant to California Code of Regulations, Title 13, Section 1969, 1962.4, 1962.5, 1692.6, 1962.7 and 1962.8. Zero-emission medium-duty vehicles delivered for sale in Colorado shall be required to meet the ZEV requirements in either this Part D or Part F.

III. Percentage Requirements

III.A. Effective 2023 through 2025 model year, each manufacturer's sales fleet of passenger cars and light-duty trucks produced and delivered for sale in Colorado shall contain at least the same percentage of ZEVs subject to the same requirements set forth in the California Code of Regulations, Title 13, Section 1962.2 using Colorado specific vehicle production volume calculated per California Code of Regulations, Title 13, Section 1962.2.

III.B. Effective 2027 through 2032 model year, each manufacturer's sales fleet of passenger cars and light-duty trucks produced and delivered for sale in Colorado shall contain at least the same percentage of ZEVs subject to the same requirements set forth in the California Code of Regulations, Title 13, Section 1962.4 (c)(1)(B) using Colorado specific vehicle production volume calculated per California Code of Regulations, Title 13, Section 1962.4 (c)(1)(C).

IV. Credits and Debits

IV.A. Credits and Debits through model year 2025

IV.A.1. ZEV credits can be earned per vehicle delivered for sale in Colorado pursuant to California Code of Regulations, Title 13, Section 1962.2(d) and (g).

IV.A.2. *Credits from ZEVs*. The amount of credits earned by a manufacturer in a given model year from ZEVs shall be expressed in units of credits, and shall be equal to the number of credits from ZEVs produced and delivered for sale in Colorado (with the exception of hydrogen fuel cell vehicles pursuant to California Code of Regulations, Title 13, Section 1962.2(d)(5)(E)) that the manufacturer applied towards meeting its ZEV requirement pursuant to California Code of Regulations, Title 13, Section 1962.2(b).

IV.A.3. *Credits from TZEVs*. The amount of credits earned by a manufacturer in a given model year from TZEVs shall be expressed in units of credits, and shall be equal to the number of credits from TZEVs produced and delivered for sale in Colorado that the manufacturer applied towards meeting its ZEV requirement pursuant to California Code of Regulations, Title 13, Section 1962.2(b).

IV.A.4. *Separate Credit Accounts*. Credits and debits from a manufacturer's ZEVs, BEVxs, TZEVs, and NEVs shall each be maintained in separate accounts.

IV.A.5. *Rounding Credits.* ZEV credits and debits shall be rounded to the nearest 1/100th only on the final credit and debit totals using the conventional rounding method.

IV.A.6.*ZEV Credits for MDVs.* Credits from ZEVs and TZEVs classified as MDVs, may be counted toward the ZEV requirement for PCs and LDTs, and included in the calculation of ZEV credits as specified in this California Code of Regulations, Title 13, Section 1962.2(g) if the manufacturer so specifies.

IV.B. Calculating ZEV Requirement Performance for model year 2027 through 2032

IV.B.1. ZEV and PHEV vehicle values can be earned per vehicle delivered for sale in Colorado pursuant to California Code of Regulations, Title 13, Section 1962.4(d) and (e).

IV.B.2. Environmental Justice Vehicle Values can be earned per vehicle delivered for sale in Colorado and will be subject to the limitations and allowance pursuant to California Code of Regulations, Title 13, Section 1962.4.

IV.B.2.a. New ZEVs and PHEVs Provided for Use in Community-based Clean Mobility Programs. New 2024 through 2031 model year ZEVs and PHEVs provided for use in community-based clean mobility programs in Colorado will earn additional vehicle values that can be used to meet a portion of the manufacturer's Annual ZEV Requirement pursuant to California Code of Regulations, Title 13, Section 1962.4(e)(2)(A).

IV.B.2.b. Vehicles in Colorado Sold At the End of Lease to Participating Dealerships. ZEVs or PHEVs initially leased in Colorado and sold at the end of lease to a Colorado dealership participating in a financial assistance program will earn additional vehicle values that can be used to meet a portion of the manufacturer's Annual ZEV Requirement pursuant to California Code of Regulations, Title 13, Section 1962.4.

IV.B.2.c. New ZEVs and PHEVs below MSRP threshold. An additional vehicle value will be earned by a manufacturer for each 2026 through 2028 model year ZEV or PHEV delivered for sale in Colorado with an MSRP less than or equal to $20,275 for passenger cars and less than or equal to $26,670 for light-duty trucks. For purposes of this section, the MSRP values shall be adjusted annually, beginning in 2026 model year, per California Code of Regulations, Title 13, Section 1962.4(e)(2)(F).

IV.B.3 Early Compliance Vehicle Values. Manufacturers may fulfill a portion of their total Annual ZEV Requirement with early compliance vehicle values earned according to California Code of Regulations, Title 13, Section 1962.4(e)(3). The Early Compliance Vehicle Values can be earned for model year 2025 and 2026 in Colorado. The early compliance vehicle values earned in model year 2025 and 2026 can be used to meet manufacturers' Annual ZEV Requirement in model year 2027 through 2029 in Colorado.

V. ZEV Credit Bank and Reporting Requirements

V.A. ZEV Credit Bank through model year 2025

V.A.1 Beginning no later than model year 2023, each manufacturer of ZEVs and TZEVs may open an account in the ZEV Credit System for banking credits in Colorado.

V.A.2. *Proportional Starting ZEV Credit Balance*. A manufacturer may deposit into its account in the ZEV Credit Bank a number of credits equal to its starting 2023 model year California credit balance multiplied by the California credit ratio. The deposit may be made only after all credit obligations for model years 2022 and earlier have been satisfied in California. While manufacturers may trade or sell these credits to any other manufacturer, use of these credits is restricted through 2025 model year in accordance with Part D, Section V.C.

V.A.3. Each manufacturer must choose one of the following two options for the 2023 through 2025 model years. A manufacturer that chooses Option 2 must notify the Executive Officer no later than January 1, 2021, or must comply with Option 1.

V.A.3.a. Option 1: A manufacturer may meet no more than 36 percent of its combined 2023-2025 model year ZEV credit obligation using credits per Part D, Section V.B.

V.A.3.b. Option 2:

V.A.3.b.1. A manufacturer may meet no more than 23 percent of its combined 2023-2025 model year ZEV credit obligation using credits per Part D, Section V.B.

V.A.3.b.2. *Early ZEV Credits*. A manufacturer may earn credits for 2021 and 2022 model year TZEVs and ZEVs, including BEVxs, produced and delivered for sale in Colorado.

V.B. ZEV Credit Bank for 2027 through 2032 model year

V.B.1. *Calculating ZEV Requirement Performance for the Model Year*. Each manufacturer shall calculate its ZEV requirement performance at the end of each model year in accordance with California Code of Regulations Title 13 Section 1962.4(f).

V.B.2 *Limitations on fulfilling a ZEV requirement shortfall*. A manufacturer who has a shortfall in a given model year, calculated according to CCR Title 13 Section 1962.4(f)(2), may use any combination of excess ZEV, PHEV, or environmental justice vehicle values, early compliance vehicle values, converted ZEV and PHEV values, pooled ZEV and PHEV values, or proportional FCEV values, to fulfill its shortfall, within the following limitations on usage per California Code of Regulations Title 13 Section 1962.4(g)(1).

V.B.3. *Calculating Converted ZEV and PHEV Values and Allowance*. At the conclusion of model year 2025, a manufacturer's PHEV and ZEV credit account balances, earned according to California Code of Regulations, Title 13, section 1962.2, will undergo a one-time conversion according to the equations in California Code of Regulations Title 13 Section 1962.4(g)(2). The Converted ZEV and PHEV Values shall be used in accordance to California Code of Regulations Title 13 1962.4(g)(2).

V.B.4. *Pooled ZEV and PHEV Values*. Manufacturers may transfer excess 2027 through 2030 model year ZEV and PHEV values earned in Colorado, California or a Section 177 ZEV state to satisfy shortfalls or deficits in 2027 through 2030 model years earned in Colorado, California or a Section 177 ZEV state. A manufacturer may not transfer more excess ZEV or PHEV values than are necessary to fulfill a shortfall within a given year or a deficit carried forward from a previous model year.

V.B.5. Calculation of Proportional FCEV Allowance and Earning of Proportional FCEV Values shall be earned and used according to California Code of Regulations Title 13 Section 1962.4(g)(4),

V.B.6 Excess vehicle values may be banked and carried over for use in future model years according to California Code of Regulations Title 13 Section 1962.4(f)(3),

V.B.7. A manufacturer may only trade excess ZEV, excess PHEV, excess environmental justice, early compliance, or converted ZEV and PHEV vehicle values and only if the conditions in California Code of Regulations Title 13 Section 1962.4(f)(4) are met,

V.C. *ZEV Reporting Requirements*.

V.C.1. In order to verify the status of each manufacturer’s compliance with the ZEV requirements through 2025 model year, each manufacturer shall submit a report to the Executive Officer at least annually, by August 31 of the calendar year following the close of the model year, that identifies the necessary delivery and placement data of all vehicles generating ZEV credits or allowances, and all transfers and acquisitions of ZEV credits pursuant to California Code of Regulations, Title 13, Section 1962.2.

V.C.2. In order to verify the status of each manufacturer's compliance with the ZEV requirements for 2027 through 2032 model year, each manufacturer shall submit a report to the Executive Officer at least annually, prior to May 1 of the calendar year following the close of the model year, that identifies the necessary delivery and placement data of all vehicles generating ZEV vehicle values or deficits, and all transfers and acquisitions of ZEV values pursuant to California Code of Regulations, Title 13, Section 1962.4.

V.C.3 Projected Sales of ZEVs and PHEVs for Future Model Years. Each manufacturer subject to the Annual ZEV Requirements of the California Code of Regulations, Title 13, Section 1962.4(c) shall submit a projected ZEV and PHEV sales report by April 1 of each calendar year beginning with the 2027 calendar year. The report shall include the manufacturer's projected number of ZEVs and PHEVs to be produced and delivered for sale in Colorado for the next model year not yet currently being produced and delivered for sale in Colorado, plus each of the subsequent four model years pursuant to California Code of Regulations, Title 13, Section 1962.4(j).

V.D. The report to the Executive Officer by each manufacturer shall be in the same format as the report submitted to CARB.

VI. Requirement to Make Up a ZEV Deficit

VI.A. Through 2025 model year, a manufacturer that produces and delivers for sale in Colorado fewer ZEVs or TZEVs than required to meet its ZEV credit obligation in a given model year must make up the deficit by the next model year by submitting a commensurate amount of ZEV credits to the Executive Officer pursuant to California Code of Regulations, Title 13, Section 1962.2(g)(7). Any manufacturer that fails to submit an appropriate amount of credits and does not make up ZEV deficits within the time specified in California Code of Regulations, Title 13, Section 1962.2(g)(7)(A) is subject to civil penalties pursuant to §25-7-122, C.R.S. For the purposes of the civil penalties pursuant to §25-7-122, C.R.S., the number of vehicles not meeting the ZEV credit obligation shall be equal to the manufacturer's credit deficit, rounded to the nearest 1/100th, calculated according to the equation in California Code of Regulations, Title 13, Section 1962.2(g)(8), provided that the percentage of a manufacturer's ZEV requirement for a given model year that may be satisfied with TZEVs or credit from such vehicles may not exceed the percentages permitted under California Code of Regulations, Title 13, Section 1962.2(b)(2).

VI.B. Determining Compliance or Deficit with Annual ZEV Requirements for 2027 through 2032 model year

VI.B.1. *Demonstrating Compliance.* Each manufacturer must report in accordance with California Code of Regulations, Title 13, Section 1962.4(j), its ZEV requirement performance for the model year under California Code of Regulations, Title 13, Section 1962.4(f) and the resulting surplus or shortfall in values for the model year after applying any values according to California Code of Regulations, Title 13, Section 1962.4 (g).

VI.B.2 *Incur and Carry Forward a ZEV Deficit.* If a shortfall in meeting the Annual ZEV Requirement remains after determining compliance under California Code of Regulations, Title 13, Section 1962.4(h)(1), the manufacturer shall incur a deficit for the model year. A manufacturer must make up the deficit within three model years following the model year in which the deficit was earned by submitting a commensurate amount, within applicable allowances for fulfilling a ZEV requirement shortfall, under California Code of Regulations, Title 13, Section 1962.4(g)(1) for the model year in which the deficit was earned, of excess ZEV, PHEV, or environmental justice vehicle values, early compliance vehicle values, or pooled ZEV or PHEV values to the Executive Officer. For example, a manufacturer must resolve a 2027 model year deficit by the conclusion of the 2030 model year.

VI.B.3. Any manufacturer that fails to submit an appropriate amount of credits and does not make up ZEV deficits within the time specified in California Code of Regulations, Title 13, Section 1962.4 is subject to civil penalties pursuant to §25-7-122, C.R.S.

PART E HEAVY-DUTY LOW NOx REGULATION (HD LOW NOx)

I. Purpose

The purpose of this Part E is to establish Colorado heavy-duty engine and vehicle standards that incorporate California engine and vehicle emission standards as provided for under Section 177 of the federal Clean Air Act, 42 U.S.C. § 7507. These standards establish criteria and procedures for the manufacturing, testing, distribution and sale of new on-highway heavy-duty trucks and engines in Colorado.

II. Applicability

II.A. This Part E is in effect as of January 1, 2026 and applies to all 2027 and subsequent model year on-highway heavy-duty engines and vehicles delivered for sale or sold in the State of Colorado. Such vehicles shall comply with the Heavy-Duty Low NOx requirements set forth in California Code of Regulations, Title 13, Sections 1956.8, 1971.1, 2036, 2121, 2137, 2139, 2139.5, 2140, 2166, 2166.1, 2167, 2168, 2169, 2169.1, 2169.2, 2169.3, 2196.4, 2169.5, 2169.6, 2167.7, 2169.8.

II.B. Exemptions

II.B.1. All exemptions in the California rules adopted under by reference apply with the exception of the transit agency diesel-fueled bus and engine exemption described in CCR, Title 13, section 1956.8(a)(2)(F).

II.B.2. New diesel-fueled buses sold to any transit agency are exempt from this Part E.

II.B.3. Authorized Emergency vehicles, as defined in § 42-1-102 (6) C.R.S. are exempt from this part E.

III. Requirement to Meet California Heavy-Duty Emission Standards

III.A. Subject to an applicable exemption, starting with the 2027 engine and vehicle model year and for each engine and vehicle model year thereafter no person may deliver for sale, or sell, in Colorado any new on-highway heavy-duty engine and vehicle unless such engine and vehicle are certified to the California emission standards as set forth in California Code of Regulations, Title 13 Section 1956.8, 1968.2, 1971.1, 2035, 2036, 2112 and 2139.

III.B. All motor heavy-duty truck manufacturers and dealers must comply with the sales and reporting requirements contained in this Part E.

IV. Recalls

IV.A. For all 2027 and subsequent model year heavy-duty engines and vehicles subject to recall in California, each manufacturer shall undertake recall campaigns in Colorado pursuant to California Code of Regulations, Title 13, Sections 2109-2135, unless the manufacturer demonstrates to the Department that such recall is not applicable to vehicles registered in Colorado.

IV.B. Any voluntary or influenced emission-related recall campaign initiated by any manufacturer as provided by under California Code of Regulations, Title 13, Sections 2113 - 2121, for vehicles subject to the requirements incorporated herein by reference, must extend to all applicable vehicles registered in Colorado. If the manufacturer can demonstrate to executive officer's satisfaction that said campaign is not applicable to vehicles registered in Colorado the campaign will not apply in Colorado.

IV.C. For vehicles subject to an order of enforcement action under Section IV.A. of this rule, each manufacturer must send to owners of vehicles registered in the State of Colorado a notice that complies with the requirements in California Code of Regulations, Title 13, Sections 2118 or 2127. The manufacturer must provide a telephone number that Colorado consumers can use to learn answers to questions about any recall that affects Colorado vehicles.

V. Inspections and Information Requests

V.A. The Department may inspect new and used motor vehicles and related records for the purposes of determining compliance with the requirements of this division. The Department may perform inspections, as necessary, during regular business hours on public property or on any premises owned, operated or used by any truck dealer or truck rental agency for the purposes of determining compliance with the requirements of this division.

V.B. For the purposes of determining compliance with this Part E, the Department may require any truck dealer or truck rental agency to submit to the Department any documentation that the Department deems necessary to the effective administration and enforcement of this Part E. This provision does not require creation of new records.

PART F ADVANCED CLEAN TRUCKS (ACT)

I. Applicability

This Part F is in effect as of January 1, 2026 and applies to all 2027 and subsequent model year vehicles. Any manufacturer that certifies on-road vehicles over 8,500 pounds' gross vehicle weight rating (GVWR) for sale in Colorado, must, at minimum, contain at least the same percentage of ZEVs subject to the requirements set forth in California Code of Regulations, Title 13, Sections 1963, 1963.1, 1963.2, 1963.3, 1963.4 and 1963.5.

II. Advanced Clean Trucks Deficits

Starting with the 2027 model year, any manufacturer that produces on-road vehicles over 8,500 pounds GVWR shall annually incur deficits based on the manufacturer's annual sales volume of on-road vehicles produced and delivered for sale in Colorado pursuant to California Code of Regulations, Title 13, Section 1963.1. Deficits are incurred when the on-road vehicle is sold to the ultimate purchaser in Colorado.

III. Advanced Clean Trucks Credit Generation, Banking and Trading

Beginning with the model year 2024 any manufacturer that produces on-road vehicles over 8,500 pounds GVWR for sale in Colorado may generate, bank, and trade ZEV and NZEV credits for such vehicles pursuant to California Code of Regulations, Title 13 Section 1963.2.

IV. Advanced Clean Trucks Compliance Determination

Annual compliance determination, requirement to make up a deficit, and credit retirement order will be determined pursuant to California Code of Regulations, Title 13, Section 1963.3. Medium- and heavy-duty ZEV and NZEV credits may be generated, banked, and traded in Colorado by manufacturers. Credits would have a limited lifetime to ensure medium and heavy-duty ZEVs are sold in Colorado. Manufacturers subject to the sales requirement must report sales information and credit trade information annually to the Department to demonstrate compliance.

V. Advanced Clean Trucks Reporting and Recordkeeping

Beginning with the 2024 model year, and no later than 90 days following the end of each model year, a manufacturer that produces on-road vehicles over 8,500 pounds' gross vehicle weight rating (GVWR) for sale in Colorado must report the listed information to the Department pursuant to California Code of Regulations, Title 13, Section 1963.4 for each on-road vehicle produced and delivered for sale in Colorado for each model year

VI. Advanced Clean Trucks Enforcement

VI.A. Any manufacturer that produces on-road vehicles over 8,500 pounds GVWR for sale in Colorado will be subjected to the enforcement of requirements pursuant to California Code of Regulations, Title 13, Section 1963.5.

VI.B. Penalty for Failure to Meet Credit and Deficit Requirements: any manufacturer that fails to retire an appropriate amount of ZEV or NZEV credits as specified in Section 1963.3(c) and does not make up deficits within the specified time allowed by Section 1963.3(b) shall be subject to civil penalties contemplated by Colorado statutes and regulations applicable to a manufacturer who does not comply with emission standards or the test procedures adopted by the Colorado Air Quality Control Commission (AQCC). The cause of action shall be deemed to accrue when the deficit is not balanced by the end of the specified time allowed by Section 1963.3(b). For the purposes of §25-7-122, C.R.S., the number of vehicles not meeting the AQCC's standards or procedures shall be equal to one half of the manufacturer's outstanding deficit.

PART G LARGE ENTITY REPORTING REQUIREMENT (LER)

I. Purpose

The purpose of large entity vehicle reporting is to collect information to assess suitability of zero emission vehicles in multiple use cases and to inform future strategies on how to accelerate the zero emission vehicle market in Colorado. All regulated entities must submit information set forth in this Part G to the Department.

II. Applicability

II.A. Except as provided in Section II.B., the following entities must submit to the Department all of the information described in Sections IV. and V. of this Part G. As used in this rule, all operations conducted by persons under common ownership or control shall be aggregated and considered to be one entity to determine fleet reporting applicability.

II.A.1. Any fleet owner in the tax year preceding each reporting year in Section III.A. of this Part G that had 20 or more vehicles with a GVWR greater than 8,500 lbs. under common ownership or control and operated a facility in Colorado;

II.A.2. Any broker or entity that dispatched 20 or more vehicles with a GVWR greater than 8,500 lbs. into or throughout Colorado, and operated a facility in Colorado, in the tax year preceding each reporting year in Section III.A. of this Part G;

II.A.3. Any Colorado government agency including all state, county and local municipalities including school districts that had 20 or more vehicles over 8,500 lbs. GVWR that were operated in Colorado the tax year preceding each reporting year in Section III.A. of this Part G; and

II.A.4. Any federal government agency that had 20 or more vehicles over 8,500 lbs. GVWR that were operated in Colorado in the tax year preceding each reporting year in Section III.A. of this Part G.

II.B. The following vehicles and persons are exempt from the reporting requirements and should not be counted or reported for the purposes of the applicability requirements in Section II.A. or the reporting requirements in Section III. of this Part G:

II.B.1. Military tactical vehicles and military tactical facilities owned or operated by the United States Department of Defense or any of the United States military services;

II.B.2. Vehicles awaiting sale; and

II.B.3. Authorized Emergency vehicles, as defined **in** § 42-1-102 (6) C.R.S.

III. General Requirements

III.A. Reporting. All entities required to report pursuant to Section II must submit information specified in Sections IV. and V. of this Part G to the Executive Officer. Subsidiaries, parent companies, or joint ventures may independently report, or the corporate parent or joint venture business may report on their behalf, as long as all information for subsidiaries, corporate parents, and joint ventures with vehicles over 8,500 lbs. are reported. These entities with brokerage and/or motor carrier authority must be reported even if no vehicles are owned by that subsidiary, corporate parents, or joint venture. Vehicles that are under common ownership or control may be submitted separately by each fleet owner. Complete information must be reported by November 30, 2024 and by December 31, 2027. Vehicle data must be reported as the fleet was comprised on a date of the fleet owner's choosing any time after March 31 of each reporting year. To the extent reports submitted contain confidential data, entities may choose to designate that information as confidential under Section 24-72-204 (3)(a), C.R.S.

III.B. Method of Reporting. Reports submitted to comply with Sections IV. and V. of this Part G must be submitted online through Colorado's Advanced Clean Trucks webpage or through other Department approved methods.

III.C. Record Retention. The fleet owner or responsible official shall maintain the records of their information required by Sections IV. and V. of this Part G for five years following each reporting deadline, for the overall fleet. In addition, the fleet owner or responsible person must maintain all fleet, vehicle, contract, and facility records used to compile responses to Section IV. and the data and analysis period used for Section V. Records must include the following:

III.C.1 For owned on-road vehicles and off-road yard tractors, mileage records and dates from records such as maintenance logs, vehicle logs, odometer readings, or other records with the information that the reporting entity used to determine their response;

III.C.2 For on-road vehicles and off-road yard tractors not owned but dispatched by the entity, dispatch records and dates, contracts, or other records with the information that the reporting entity used to determine their responses;

III.C.3 Vehicle registration for each owned vehicle in the Colorado fleet; and

III.C.4 Contracts with entities, or contracts with subhaulers, or other records with the information that an entity used to determine their responses.

III.D. Request to Clarify Reported Data. A fleet must respond to requests for clarification of reported information within 14 days of receiving the request from the Executive Officer.

IV. General Entity Information Reporting

All entities subject to the regulation must report the following general information about their entity and business practices:

IV.A. General information.

IV.A.1. Entity name and fictitious business name if applicable;

IV.A.2. Mailing address including street name or P.O. box, city, state, and ZIP code;

IV.A.3. Designated contact person name;

IV.A.4. Designated contact person's email address;

IV.A.5. Designated contact person's phone number;

IV.A.6. Corporate parent name or governing body (if applicable);

IV.A.7. Federal Taxpayer Identification Number of Corporate Parent or other entities with which your entity has vehicles under common ownership or control (if applicable);

IV.A.8. For government entities, identify the jurisdiction (federal, state, or local);

IV.A.9. Federal Taxpayer Identification Number (if applicable);

IV.A.10. Primary six-digit North American Industry Classification System (NAICS) code (if applicable);

IV.A.11. For non-governmental entities, identify the total annual revenue for the entity in the United States for the tax year preceding each reporting year in Section III.A. of this Part G. Respond by using the following bins in millions of dollars (<$10, $10-$49, $50-$99, $100-$499, $500-$999, >$1,000);

IV.A.12. Identify if your entity has broker authority under the Federal Motor Carrier Safety Administration;

IV.A.13. The following operating authority numbers, if applicable: Motor carrier identification number, United States Department of Transportation number, Colorado Carrier Identification number, Colorado Public Utilities Commission transportation charter permit number, International Registration Plan number;

IV.A.14. Identify the number of entities with whom you had a contract to deliver items or to perform work in Colorado using vehicles over 8,500 lbs. GVWR to serve your customers while representing your entity’s brand for either 2022 or 2023 for the 2024 reporting year, or for either 2025 or 2026 for the 2027 reporting year in Section III.A. of this Part G. Respond using the following bins (0, 1-10, 11-20, 20-50, or more than 50);

IV.A.15. If your entity has motor carrier or broker authority and contracts with subhaulers to serve your customers, identify the following for either 2022 or 2023 for the 2024 reporting year or for either 2025 or 2026 for the 2027 reporting year in Section III.A. of this Part G; if you do not have motor carrier or broker authority, mark “Does not apply”:

IV.A.15.a. The number of subhaulers you contracted with in Colorado to transport goods or other property. Respond using the following bins (Does not apply, 0, 1-10, 11-20, 20-50, or more than 50);

IV.A.15.b. Estimated number of vehicles operated by your subhaulers on your behalf in Colorado. Respond using the following bins (Does not apply, 0, 1-10, 11-20, 20-99, 100-500, >500); and

IV.A.15.c. Estimated number of vehicles operated by subhaulers that operated under your motor carrier authority in Colorado. Respond using the following bins (Does not apply, 0, 1-10, 11-20, 20-99, 100-500, >500).

IV.A.16. Identify whether your entity has a written sustainability plan to reduce your carbon footprint. Respond with (Yes, No, Does not apply);

IV.A.17. Identify whether your entity's written sustainability plan includes transportation emissions reduction goals. Respond with (Yes, No, Does not apply);

IV.A.18. Identify the number of vehicles with a GVWR over 8,500 lb. your entity owned and operated in Colorado for either 2022 or 2023 for the 2024 reporting year or for either 2025 or 2026 for the 2027 reporting year in Section III.A. of this Part G that do not have a vehicle home base in Colorado.

IV.A.19. Identify whether the data used to respond to the questions in this Section IV. were from for either 2022 or 2023 for the 2024 reporting year or for either 2025 or 2026 for the 2027 reporting year in Section III.A. of this Part G or a combination thereof.

V. Vehicle Usage by Facility Reporting.

Regulated entities that own or operate any vehicles under common ownership or control, or that broker to use vehicles with a GVWR greater than 8,500 lbs. must report general information about the vehicle home base where all on-road vehicles and off-road yard tractors are domiciled or assigned as specified in Section V.A., and information about vehicle operating characteristics for vehicles domiciled or assigned to each vehicle home base in Colorado as specified in Section V.B. Vehicles that accrue a majority of their annual miles in Colorado, but are not assigned to a particular location in Colorado, must be reported as part of the headquarters or another location where the vehicles' operation is managed.

V.A. All regulated entities must report the following information for each vehicle home base:

V.A.1. Facility address including street name, city, state, and ZIP code;

V.A.2. Facility type category as listed in Section VI.G.;

V.A.3. Contact person name;

V.A.4. Contact person email address;

V.A.5. Identify whether the facility is owned or leased by the entity;

V.A.6. Identify what type of fueling infrastructure is installed at the facility, by selecting all of the fuel types dispensed at the facility as listed in Sections V.A.6.a to V.A.6.g.:

V.A.6.a. Diesel;

V.A.6.b. Gasoline;

V.A.6.c. Natural gas;

V.A.6.d. Electricity for on-road vehicle charging (Level 2 or higher power);

V.A.6.d.i. If present, provide a number of chargers.

V.A,6.d.ii. If present, provide kW capacity of the charger(s).

V.A.6.e. Hydrogen;

V.A.6.f. Other fuel; or

V.A.6.g. Not applicable.

V.A.7. Identify what fueling infrastructure was initially installed on or after January 1, 2010 for the fueling options listed in Sections V.A.6.a. to V.A.6.g.;

V.A.8. Identify what types of trailers you pull if you have tractors assigned or domiciled at this facility:

V.A.8.a. Van-dry;

V.A.8.b. Van-reefer;

V.A.8.c. Tanker;

V.A.8.d. Flatbed;

V.A.8.e. Shipping container;

V.A.8.f. Low bed;

V.A.8.g. Curtain side; or

V.A.8.h. Other.

V.B. For each vehicle home base with a vehicle above 8,500 lbs. GVWR, report information specified in Sections V.B.1. to V.B.6. for all vehicles above 8,500 lb. GVWR including off-road yard tractors. Responses must be grouped by vehicle body type as listed in Section VI.T., weight class bin specified in Section VI.W., and fuel type listed in Sections V.A.6.a. to V.A.6.g. Alternatively, responses may be completed for each individual vehicle and include the vehicle's body type, weight class bin, and fuel type. Separately report vehicles dispatched under your brokerage authority, if applicable. Each vehicle should only be counted once for each response. Additional guidance for analysis periods used to respond to questions in this section is located in Section V.B.7. Additional guidance on reusing vehicle operational information between similar locations is located in Section V.B.8. Vehicles dispatched under your brokerage authority but not owned by your entity are not subject to reporting information from Sections V.B.2.a. to V.B.2.e. and additional guidance for brokers is located in Section V.B.9.

V.B.1. How many vehicles in each vehicle group;

V.B.2. The percent of the vehicles in each vehicle group that have the operations listed in Sections V.B.2.a. through V.b.2.q., except Section V.B.2.j., represented by 90 percent of a vehicle's operating days for the analysis period selected per Section V.B.7. Respond by estimating the percent of the total vehicles that apply to the category and rounding to the nearest 10 percent. For yard tractors, Sections V.B.2.a. through V.B.2.e. and V.B.2.k. are optional. Do not include backup or non-operational vehicles in calculating vehicle group mileage averages.

V.B.2.a. Operate up to 100 average miles per day;

V.B.2.b. Operate up to 150 average miles per day;

V.B.2.c. Operate up to 200 average miles per day;

V.B.2.d. Operate up to 300 average miles per day;

V.B.2.e. Operate more than 300 average miles per day;

V.B.2.f. Has a predictable usage pattern. For example, refuse trucks or package delivery trucks typically have predictable usage patterns because they tend to serve the same neighborhoods each week;

V.B.2.g. Fuels on-site as the primary means of fueling;

V.B.2.h. Typically returns to this vehicle home base daily. For example, if a vehicle returns to a personal residence nearly all days of the year and does not return to the vehicle home base often, the vehicle would not be counted; however, a vehicle that returns to the vehicle home base nightly for 9 out of 10 work days, or always stays at home base, would be counted;

V.B.2.i. Has onboard GPS or mileage tracking;

V.B.2.j. Whether most of the vehicles in the group stay within approximately 50 miles of this facility on a typical day (indicate either Yes or No);

V.B.2.k. Tows a trailer more than 100 miles a day;

V.B.2.l. Commonly operates at its weight limit;

V.B.2.m. Is not registered in Colorado;

V.B.2.n. Is regularly parked at the facility more than 8 hours each day;

V.B.2.o. The highest approximate percent of the vehicle group that was dispatched at the same time over the last 3 years on the behalf of a local, state or federal government to support an emergency operation such as repairing or preventing damage to roads, buildings, terrain, and infrastructure as a result of an earthquake, flood, storm, fire, terrorism, or other infrequent acts of nature;

V.B.2.p. Is equipped with all-wheel drive; and

V.B.2.q. Are not being operated or are used as backup vehicles.

V.B.3. The average annual mileage for a typical vehicle in this vehicle group. Respond by using one of the following that is closest to the average miles (5,000 or less, 10,000, 20,000, 30,000, 40,000, 50,000, 60,000, 70,000, 80,000, 90,000, 100,000, or more than 100,000).

V.B.4. For vehicle types represented in this group, identify how long you typically keep vehicles after acquisition. Respond in number of years by using one of the following bins: (Less than 4, 5-10, 11-15, 16-20, or more than 20).

V.B.5. Identify whether your entity is the fleet owner for this group of vehicles, or if they are dispatched under your brokerage authority.

V.B.6. Identify the start and end date of the analysis period selected per Section V.B.7.

V.B.7. Entities must either use annual or quarterly data averaged for work days during the period selected to determine responses or alternatively may select a different time period. A shorter analysis period may be used if the respondent deems it more representative of periods of high vehicle utilization when answering questions about typical daily operation. For example, if an entity selects annual data to determine vehicle daily mileage, average the annual mileage accrued by the number of workdays that year. Otherwise, if an entity with seasonal workload fluctuations determines that a week or month during the busy season is representative, average the data records for that week or month when determining a response. If an alternative analysis period is used, the respondent must be prepared to describe their reasoning at the request of the Executive Officer per Section III.D.

V.B.8. Responses for items in Section V.B.1. through V.B.5. for a vehicle group at one location may be repeated for the same vehicle group at another vehicle home base if the respondent that is familiar with the vehicle operation determines the operation at that location is substantially similar to another location.

V.B.9. A broker is only expected to provide information about vehicle usage that is dispatched under contract with a fleet owner. For example, if a broker hires a truck to move a load, only the miles driven under that contract should be considered for the responses and the broker is not expected to have information about the miles driven outside the contract, but may voluntarily report the information if known.

VI. Definitions. The following definitions shall apply for this Part G.

VI.A. *Backup Vehicle* means a self-propelled motor vehicle designed for on-highway use that is used intermittently to maintain service during periods of routine or unplanned maintenance, unexpected vehicle breakdowns, or accidents but is not used in everyday or seasonal operations.

VI.B. *Broker* means an entity or person who has broker authority from the Federal Motor Carrier Safety Administration and, for compensation, arranges or offers to arrange the transportation of property by an authorized motor carrier. A motor carrier, or person who is an employee or bona fide agent of a carrier, is not a broker when it arranges or offers to arrange the transportation of shipments which it is authorized to transport and which it has accepted and legally bound itself to transport.

VI.C. *Common Ownership or Control* means being owned or managed day to day by the same person or entity. Vehicles managed by the same directors, officers, or managers, or by corporations controlled by the same majority stockholders are considered to be under common ownership or control even if their title is held by different business entities. Common ownership or control of a federal government vehicle shall be the primary responsibility of the unit that is directly responsible for its day to day operational control.

VI.D. *Corporate Parent* means a business that possesses the majority of shares in another business, which gives them control of their operational procedures.

VI.E. *Dispatched* means provided direction or instruction for routing a vehicle(s), whether owned or under contract, to specified destinations for specific purposes, including but not limited to delivering cargo, passengers, property or goods, providing a service, or assisting in an emergency.

VI.F. *Facility* means any property with one or more unique physical addresses.

VI.G. *Facility Category* means a classification of different facility types based on a facility's primary purpose. Facility categories are defined as the following:

VI.G.1. *Administrative/Office Building* means a building or structure used primarily for day-to-day activities that are related to administrative tasks such as financial planning, record keeping & billing, personnel, physical distribution and logistics, within a business.

VI.G.2. *Distribution Center/Warehouse* means a location used primarily for the storage of goods which are intended for subsequent shipment.

VI.G.3. *Hotel/Motel/Resort* means a commercial establishment offering lodging to travelers and sometimes to permanent residents.

VI.G.4. *Manufacturer/Factory/Plant* means a location with equipment for assembling parts, producing finished products, intermediate parts, or energy products.

VI.G.5. *Medical/Hospital/Care* means an institution engaged in providing inpatient diagnostic and therapeutic services or rehabilitation services by or under the supervision of physicians.

VI.G.6. *Multi-Building Campus/Base* means a property typically operated by a single entity with several buildings, often serving multiple purposes.

VI.G.7. *Restaurant* means a business establishment where the primary purpose is serving meals or refreshments.

VI.G.8. *Service Center* means a facility that supports a business operation that generates revenue by providing a specific service or product, or a group of services or products to a customer.

VI.G.9. *Store* means an establishment that sells goods or a variety of goods and services to the general public.

VI.G.10. *Truck/Equipment Yard* means an establishment that primarily stores or dispatches trucks and equipment such as a garage or parking lot.

VI.G.11. *Any Other Facility Type* means any facility that is not included in Sections VI.G.1. through VI.G.10.

VI.H. *Fleet* means one or more self-propelled on-road vehicles under common ownership or control of a person, business, or agency as defined in§ 42-1-102 (66) C.R.S. This includes vehicles that are rented or leased from a business that regularly engages in the trade or business of leasing or renting motor vehicles without drivers where the vehicle rental or leasing agreement for the use of a vehicle is for a period of one or more years.

VI.I. *Fleet Owner* means, except as modified in Sections VI.I.1. and VI.I.2., either the person registered as the owner or lessee of a vehicle by the Colorado Department of Motor Vehicles (DMV), or its equivalent in another state, province, or country; as evidenced on the vehicle registration document carried in the vehicle.

VI.I.1. For vehicles that are owned by the federal government and not registered in any state or local jurisdiction, the owner shall be the department, agency, branch, or other entity of the United States, including the United States Postal Service, to which the vehicles in the fleet are assigned or which have responsibility for maintenance of the vehicles.

VI.I.2. For a vehicle that is rented or leased from a business that is regularly engaged in the trade or business of leasing or renting motor vehicles without drivers, the owner shall be the rental or leasing entity if the rental or lease agreement for the use of a vehicle is for a period of less than one year, otherwise the owner shall be the renter or lessee.

VI.J. *Government Agency* means any federal, state, or local governmental agency, including, water districts, or any other public entity with taxing authority.

VI.K. *Gross Annual Revenue* means the total revenue, receipts, and sales reported to the Internal Revenue Service for a consecutive 12-month period.

VI.L. *Gross Vehicle Weight Rating or GVWR* means the weight specified by the manufacturer as the loaded weight of a single vehicle.

VI.M. *Motor Carrier* is the same as defined in California Vehicle Code Section 408.

VI.N. *Municipality* means a city, county, city and county, special district, or a public agency of the State of Colorado, and any department, division, public corporation, or public agency of this State.

VI.O. *Responsible Official* means one of the following:

VI.O.1. For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or their delegate, designee, or any other person who performs similar policy or decision-making functions for the corporation;

VI.O.2. For a partnership or sole proprietorship: A general partner or the proprietor, or the delegate or designee of the aforementioned, or any other person who performs similar policy or decision-making functions for the business; or

VI.O.3. For a municipality, state, federal, or other governmental agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. EPA). For the purposes of the Department of Defense Military Services, a principal executive officer includes a commanding officer of an installation, base, or tenant organization.

VI.P. *Subsidiary* means a company controlled by another company.

VI.Q. *Subhauler* means a for-hire motor carrier who enters into an agreement to provide transportation services on the behalf of another motor carrier or broker.

VI.R. *Transportation Network Company* means any entity or person that provides prearranged transportation services for compensation using an online-enabled application or platform (such as smart phone apps) to connect drivers using their personal vehicles with passengers.

VI.S. *Vehicle* means self-propelled equipment intended for use on highways, and does not include motorcycles.

VI.T. *Vehicle Body Type* means commonly used vehicle body descriptions to be used in responding to questions about the fleet of vehicles including the following: beverage truck, boom/bucket, box reefer, box dry van, bus-shuttle, bus-other, car/SUV, car carrier, concrete mixer, concrete pump, crane, drill rig, dump, flatbed or stake bed, garbage front loader, garbage side loader, garbage packer, garbage roll-off, other, pickup bed, service body, sweeper, tank, tractor day cab, tractor sleeper cab, tow, vacuum, water, van-cargo, van-step, van-passenger, on-road or off-road yard tractor.

VI.U. *Vehicle Home Base* means the location where a vehicle is domiciled meaning a business location where a vehicle is typically kept when not in use. Vehicles that are kept at a personal residence or kept at a location that is not operated by the entity shall use the location where the vehicle is dispatched from or where the vehicle is repaired or maintained.

VI.V. *Vehicles Awaiting Sale* means vehicles in the possession of dealers, financing companies, or other entities that do not intend to operate the vehicle in Colorado or offer the vehicle for hire for operation in Colorado, and that are operated only to demonstrate functionality to potential buyers or to move short distances while awaiting sale for purposes such as maintenance or storage.

VI.W. *Weight Class Bin* means a list of vehicles categorized by GVWR. The weight class bins are one of the following:

VI.W.1. *Light-Duty* means a self-propelled motor vehicle designed for on-highway use with a GVWR of 8,500 lbs. or less. Also referred to as Class 1-2a. This includes passenger cars, sport utility vehicles, minivans, and light pickup trucks.

VI.W.2. *Class 2b-3* means a self-propelled motor vehicle designed for on-highway use with a GVWR from 8,501 lb. to 14,000 lb. The types of vehicle in this category generally includes full-size pickup trucks, smaller utility trucks, cargo vans, and passenger vans.

VI.W.3. *Class 4-6* means a self-propelled motor vehicle designed for on-highway use with a GVWR from 14,001 lb. to 26,000 lb.

VI.W.4. *Class 7-8* means a self-propelled motor vehicle designed for on-highway use with a GVWR greater than 26,000 lbs.

PART H INCORPORATIONS BY REFERENCE

This Regulation Number 20 incorporates by Reference the following California Code of Regulations, Title 13, Sections identified in the following table. All references to the California Code of Regulations in this Regulation Number 20 mean the versions specified in the table.

For the purposes of applying the incorporated sections of the California Code of Regulations, unless the context requires otherwise, “California” means “Colorado”. Depending on context, “CARB” or “AIR Resources Board” means Colorado Department of Public Health and Environment, and “Executive Officer” means the Executive Director of the Colorado Department of Public Health and Environment.

Table 1. Code of California Regulations, Title 13. Motor Vehicle, Division 3. Air Resource Board

Section	Title	Section Amended Date
Chapter 1 Motor Vehicle Pollution Control Devices		
Article 1. General Provisions		
1900	Definitions	*November 30, 2022*
Article 2. Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		

Section	Title	Section Amended Date
1956.8	Exhaust Emissions Standards and Test Procedures--1985 and Subsequent Model Heavy-Duty Engines and Vehicles, 2021 and Subsequent Zero-Emission Powertrains, and 2022 and Subsequent Model Heavy-Duty Hybrid Powertrains.	*April 1, 2022*
1961.2	Exhaust Emission Standards and Test Procedures--2015 through 2025 Model Year Passenger Cars and Light-Duty Trucks, and 2015 through 2028 Model Year Medium-Duty Vehicles.	*November 30, 2022*
1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	*November 30, 2022*
1961.4	Exhaust Emission Standards and Test Procedures--2026 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	*November 30, 2022*
1962.2	Zero-Emission Vehicle Standards for 2018 through 2025 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	*November 30, 2022*
1962.3	Electric Vehicle Charging Requirements	*November 30, 2022*
1962.4	Zero-Emission Vehicle Requirements for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks.	*November 30, 2022*
1962.5	Data Standardization Requirements for 2026 and Subsequent Model Year Light-Duty Zero Emission Vehicles and Plug-in Hybrid Electric Vehicles.	*November 30, 2022*
1962.6	Battery Labeling Requirements.	*November 30, 2022*
1962.7	In-Use Compliance, Corrective Action and Recall Protocols for 2026 and Subsequent Model Year Zero-Emission and Plug-in Hybrid Electric Passenger Cars and Light-Duty Trucks.	*November 30, 2022*
1962.8	Warranty Requirements for Zero-Emission and Batteries in Plug-in Hybrid Electric 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks.	*November 30, 2022*
1963	Advanced Clean Trucks Purpose, Applicability, Definitions, and General Requirements	*March 15, 2021*
1963.1	Advanced Clean Trucks Deficits	*March 15, 2021*
1963.2	Advanced Clean Trucks Credit Generation, Banking, and Trading	*March 15, 2021*
1963.3	Advanced Clean Trucks Compliance Determination	*March 15, 2021*
1963.4	Advanced Clean Trucks Reporting and Recordkeeping	*March 15, 2021*
1963.5	Advanced Clean Trucks Enforcement	*March 15, 2021*

Section	Title	Section Amended Date
1965	Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles	*April 1, 2022*
1968.2	Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	*November 30, 2022*
1969	Motor Vehicle Service Information--1994 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Engines and Vehicles, and 2007 and Subsequent Model Heavy-Duty Engines.	*November 30, 2022*
1971.1	On-Board Diagnostic System Requirements - 2010 and Subsequent Model-Year Heavy-Duty Engines	*November 22, 2022*
1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	*November 30, 2022*
1978	Standards and Test Procedures for Vehicle Refueling Emissions	*November 30, 2022*
Article 6. Emission Control System Warranty		
2035	Purpose, Applicability and Definitions	*April 1, 2022*
2036	Defects Warranty Requirements for 1979 Through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles	*April 1, 2022*
2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	*November 30, 2022*
2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	*November 30, 2022*
2039	Emission Control System Warranty Statement	*December 26, 1990*
2040	Vehicle Owner Obligations	*October 1, 2019*
2041	Mediation; Finding of Warrantable Condition	*December 26, 1990*
2046	Defective Catalyst	*February 15, 1979*
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing		
Article 1. Assembly-Line Testing		
2062	Assembly-line Test Procedures 1998 and Subsequent Model years	*August 7, 2012*
Article 1.5. Enforcement of Vehicle Emission Standards and Surveillance Testing for 2005 and Subsequent Model Year Heavy-Duty Engines and Vehicles		

Section	Title	Section Amended Date
2065	Applicability of Chapter 2 to 2005 and Subsequent Model Year Heavy-Duty Engines and Vehicles	*April 1, 2019*
Article 2. Enforcement of New and In-use Vehicle Standards		
2109	New Vehicle Recall Provisions	*December 30, 1983*
Article 2.1. Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
2111	Applicability	*April 1, 2022*
2112	Definitions	*April 1, 2022*
2113	Initiation and Approval of Voluntary and Influenced Emission-Related Recalls	*April 1, 2022*
2114	Voluntary and Influenced Recall Plans	*April 1, 2022*
2115	Eligibility for Repair	*April 1, 2022*
2116	Repair Label	*April 1, 2022*
2117	Proof of Correction Certificate	*April 1, 2022*
2118	Notification	*April 1, 2022*
2119	Recordkeeping and Reporting Requirements	*April 1, 2022*
2120	Other Requirements Not Waived	*January 26, 1995*
2121	Penalties	*April 1, 2022*
Article 2.2. Procedures for In-Use Vehicle Ordered Recalls		
2122	General Provisions	*December 8, 2010*
2123	Initiation and Notification of Ordered Emission-Related Recalls	*April 1, 2022*
2124	Availability of Public Hearing	*January 26, 1995*
2125	Ordered Recall Plan	*April 1, 2022*
2126	Approval and Implementation of Recall Plan	*April 1, 2022*
2127	Notification of Owners	*April 1, 2022*
2128	Repair Label	*April 1, 2022*
2129	Proof of Correction Certificate	*April 1, 2022*
2130	Capture Rates and Alternative Measures	*April 1, 2022*

Section	Title	Section Amended Date
2131	Preliminary Tests	*April 1, 2022*
2132	Communication with Repair Personnel	*January 26, 1995*
2133	Recordkeeping and Reporting Requirements	*April 1, 2022*
2134	Penalties	*January 26, 1995*
2135	Extension of Time	*January 26, 1995*
Article 2.3. In-Use Vehicle Enforcement Test Procedures		
2137	Vehicle, Engine, and Trailer Selection	*April 1, 2022*
2139	Testing	*November 30, 2022*
2140	Notification and Use of Test Results	*November 30, 2022*
Article 2.4. Procedures for Reporting Failure of Emission-Related Components		
2141	General Provisions	*April 1, 2022*
2142	Alternative Procedures	*April 1, 2022*
2143	Failure Levels Triggering Recall	*April 1, 2022*
2144	Emission Warranty Information Report	*April 1, 2022*
2145	Field Information Report	*April 1, 2022*
2146	Emissions Information Report	*April 1, 2022*
2147	Demonstration of Compliance with Emission Standards	*November 30, 2022*
2148	Evaluation of Need for Recall	*April 1, 2022*
2149	Notification of Subsequent Action	*April 1, 2022*
Article 5. Procedures for Reporting Failures of Emission-Related Equipment and Required Corrective Action		
2166	General Provisions	*April 1, 2022*
2166.1	Definitions	*April 1, 2022*
2167	Required Recall and Corrective Action for Failures of Exhaust After-Treatment Devices, On-Board Computers or Systems, Urea Dosers, Hydrocarbon Injectors, Exhaust Gas Recirculation Valves, Exhaust Gas Recirculation Coolers, Turbochargers, Fuel Injectors	*April 1, 2022*
2168	Required Corrective Action and Recall for Emission-Related Component Failures	*April 1, 2022*

Section	Title	Section Amended Date
2169	Required Recall or Corrective Action Plan	*April 1, 2022*
2169.1	Approval and Implementation of Corrective Action Plan	*April 1, 2022*
2169.2	Notification of Owners	*April 1, 2022*
2169.3	Repair Label	*April 1, 2022*
2169.4	Proof of Correction Certificate	*April 1, 2022*
2169.5	Preliminary Tests	*April 1, 2022*
2169.6	Communication with Repair Personnel	*April 1, 2022*
2169.7	Recordkeeping and Reporting Requirements	*April 1, 2022*
2169.8	Extension of Time	*April 1, 2022*
Chapter 4. Criteria for the Evaluation of Motor Vehicle Pollution Control Devices and Fuel Additives		
Article 2. Aftermarket Parts		
2222 (h) and (i)	Add-On Parts and Modified Parts	*October 1, 2021*

Regulation Number 20 does not include any later amendments or editions of the regulations incorporated by reference. The incorporated regulations are available for inspection at the Division during normal business hours at:

Colorado Department of Public Health and Environment
Air Pollution Control Division, Mobile Sources Section
4300 Cherry Creek Drive South, Denver, CO, 80220

Or online at:

https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I88D700E0D46911DE8879F88E8B0DAAAE&originationContext=documenttoc&transitionType=Default&contextData=%28sc.Default%29

Copies of the incorporated regulations are also available for a reasonable charge from the Department and from:

Barclays Official California Code of Regulations
50 California Street Second Floor
San Francisco, CA 94111

PART I STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

I. ADOPTED: November 15, 2018 (Adoption of all Sections)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5, C.R.S. and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

On June 18, 2018, Governor John Hickenlooper, by Executive Order B 2018 006, directed the Colorado Department of Public Health and Environment to develop and propose a regulation for the implementation of a Colorado low emission vehicle ("LEV") program, incorporating the requirements of the California LEV program. The Executive Order declared the need for adopting the LEV program as a response to the federal governments announced intention to roll back vehicle greenhouse gas ("GHG") standards for model years 2022 and beyond. Currently, the federal and California vehicle standards establish essentially the same emission limits. Colorado's adoption of the California vehicle standards for light- and medium-duty vehicles is intended to maintain the standards already in place for these vehicle in Colorado.

However, the Commission notes that it spent considerable time gathering input from the auto industry, environmental groups, local governments, and the Division regarding the potential implications of this rule prior to the issuance of the Executive Order. The Commission's decision to embark upon this rulemaking hearing was deliberate and well considered, and all interested parties and members of the public had significant opportunity to provide input to the Commission in its consideration of whether to adopt this regulation. The Commission determines adoption of Regulation Number 20, Colorado Low Emission Automobile Regulation Number ("CLEAR") will reduce vehicle GHG emissions in Colorado by retaining vehicle standards demonstrated through comprehensive analyses as being economically reasonable, technologically feasible and to provide the co-benefit of reducing costs for Colorado drivers.

Statutory Authority

Section 177 of the federal Clean Air Act ("CAA"), 42 U.S.C. Section 7507, provides states the option of requiring compliance with either federal or approved California standards for vehicles sold within their borders. The Colorado Air Pollution Prevention and Control Act, §§ 25-7-101, C.R.S., et seq., ("Act") at § 25-7-105(1), directs the Commission to promulgate emission control regulations consistent with the legislative declaration set forth in § 25-7-102 and in conformity with § 25-7-109. The legislative declaration identifies, among other objectives, the need to "achieve the maximum practical degree of air purity in every portion of the State …." § 25-7-102, C.R.S. §§ 25-7-109(1)(a) and (2) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, and emission control regulations pertaining to carbon oxides. § 25-7-106 further provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution.

While there were arguments made as part of the proceeding that vehicle emission control studies and a resulting recommendation from the Commission are prerequisites to the adoption of Regulation Number 20 pursuant to § 25-7-130, the Commission disagrees, based on both the plain language and the legislative history of the statute. § 25-7-130 pertains to inspection and maintenance programs for in-use vehicles, and this regulation is solely applicable to new vehicles. In addition, while § 25-7-130 requires the Division to conduct studies and pilot programs and the Commission to create recommendations based upon the results of those efforts, nothing in the statute directly requires those studies, programs, and recommendations to be performed and developed before the Commission can propose and adopt a rule.

Purpose

The following section sets forth the Commission's purpose in adopting Regulation Number 20, and includes the technological and scientific rationale for the adoption of the regulation. The Commission determines adoption of Regulation Number 20 CLEAR will reduce vehicle emissions in Colorado. The Commission is utilizing the option that CAA Section 177 provides states to choose between the federal and approved California vehicle standards. Nothing in CLEAR is intended to differ in any substantive way from the provisions adopted by California as of the effective date of these revisions adopted by the Commission. The Commission determines adopting the California standards will retain the vehicle standards currently in place in Colorado and avoid the disbenefits of the anticipated roll back of federal standards. In accordance with C.R.S. §§ 25-7-105.1 and 25-7-133(3) the Commission states the rules in Regulation Number 20 adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado's State Implementation Plan (SIP).

As part of adopting the revisions to Regulation Number 20, the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b). The Commission considered information in the record regarding the state policy regarding air pollution ("…to achieve the maximum practical degree of air purity in every portion of the state, to attain and maintain the national ambient air quality standards…"), federal recommendations and requirements, the degree to which altitude, topography, climate, or meteorology requires different more or less stringent regulations in different parts of the state, the degree to which these types of emissions are subject to treatment and the availability and feasibility of treatment, the significance of the emissions to be controlled, the continuous nature of the emissions to be controlled, the economic, environmental, and energy costs of complying with the rule, and whether the rule should be statewide or apply only to portion of the state.

The Division provided an economic impact analysis for this rule, as well as a cost-benefit analysis pursuant to § 24-4-103(2.5), C.R.S. and a regulatory analysis pursuant to § 24-4-103(4.5), C.R.S. The Division made a good faith effort to provide the most complete and accurate analyses based on the information reasonably available to it. Expert testimony presented to the commission raises serious questions about cost estimates from the August 2018 SAFE Rule proposal (83 FR 48578). The commission did not rely on these estimates. Nevertheless, the division's cost benefit analysis, revised final economic impact analysis, and regulatory analysis and other evidence in the record amply support the conclusion that Regulation Number 20 is a practical measure that will cost effectively reduce GHG emissions.

To the extent that C.R.S. § 25-7-110.5(5)(b) requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) *Any federal requirements that are applicable to this situation with a commentary on those requirements;*

Section 177 of the Federal Clean Air Act permits states the option of adopting California car standards. Twelve other states and the District of Columbia made this adoption of California standards in the past 14 years.

Auto manufacturers typically build two models of a particular car – one for sale in California, and another to sell elsewhere. California cars have been historically slightly lower-emitting than their federally certified counterparts. However, the standards for both were harmonized in 2017. The U.S. Environmental Protection Agency ("US EPA") is taking action to roll back a standards change proposed for the 2021 model year. California cars would retain the standards-change that further reduces GHG emissions. California's rules previously allowed for manufacturers to comply with California's program by complying with the equivalent federal standards; however, California recently revised its rules to disallow compliance with federal standards to satisfy compliance with California standards in the event of a roll back.

(II) *Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;*

The federal Clean Air Act grants authority to US EPA to establish new vehicle emissions standards. California mandated its own emissions standards, predating the federal Act. Car manufacturers have been engineering to federal or California emissions standards for 50 years, with tremendous technological innovation during that time. These are performance-based emissions standards – vehicles may not emit more than x grams per mile of the various criteria and GHG emissions for either certification.

(III) *Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;*

The Executive Order requires the Commission to consider adopting California Low Emission Vehicle standards. Because the ozone-forming criteria emissions standards are essentially the same between California and federal cars, there is little ozone benefit for Colorado in this rule. The emission reduction benefits to be derived from this regulation is primarily for GHG reductions. GHG are contributing to climate change, which is a concern to many Coloradoans. The extent to which Colorado's concerns and issues will be specifically addressed in the federal proposal is unclear.

(IV) *Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;*

The regulatory burden of the proposed rule falls on auto manufacturers and dealers. The proposed rule does not significantly improve nor inhibit manufacturer's and Dealers' ability to comply, since these cars are being built for consumers in 13 states and the District of Columbia already.

(V) *Whether there is a timing issue which might justify changing the time frame for implementation of federal requirement;*

The federal administration formally proposed rollback options for the 2021 GHG standards on August 2, 2018. This proposed federal rule also considers revoking California's waiver to set their own standards. The federal Clean Air Act, Section 177 allows a state to adopt California new car emissions standards in lieu of federal standards. There is a mandated two-model-year lead time when a state makes the Section 177 adoption to California standards. Those standards are due to lapse after the 2025 model year. So, in order for Colorado to maximize the benefits from this new rule, it should be adopted before January 1, 2019.

(VI) *Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;*

The proposed rule will reduce GHG emissions in support of Colorado's Climate Action Plan and Executive Order D 2017-015. As the Colorado vehicle fleet turns over and newer, lower-emitting vehicles are brought into use, overall emissions are reduced.

(VII) *Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;*

The proposed rule affects a single source category, mobile sources. Therefore, there are no equity issues between these sources. However, if the federal vehicle standards are rolled back and this proposed rule is not adopted, additional GHG emissions reductions will be required from other emission source categories to make up for the loss of approximately 30 million tons of benefit in GHG reduction projected to be achieved through this rule, in order to meet the Governor's Executive Order D2017-015.

(VIII) *Whether others would face increased costs if a more stringent rule is not enacted;*

As a contributor to climate change, GHG emissions present a cost to Coloradoans and Colorado businesses. In order to meet the goals of the Climate Action Plan, GHG emissions reductions not gained from the Mobile source sector may need to be taken from other industries.

(IX) *Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;*

Although California-certified Low Emission Vehicles will be built to different standards than their federally-certified counterparts, the processes and procedures are very similar. There will be some additional monitoring, averaging, and reporting requirements, although vehicle manufacturers and dealers are already meeting those requirements in 13 other states and the District of Columbia.

There will be additional workload on state and county staff, performing surveillance and enforcement, new vehicle titling and registration requirements, and monitoring vehicles sales.

(X) *Whether demonstrated technology is available to comply with the proposed requirement;*

Both US EPA and the California Air Resources Board have found that the standards in the proposed rule are appropriate based on existing and maturing technologies. EPA has reversed themselves stating in April 2018 that the 2021 GHG standards change is inappropriate.

(XI) *Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain; and*

The proposed rule is estimated to reduce GHG emissions by approximately 30 million tons over the lifetime of vehicles built for model years 2022 through 2031. A co-benefit to reducing GHG emissions is a savings to Colorado motorists, resulting in a savings over the life of a LEV vehicle that more than offsets the increase in purchase price of the vehicle.

(XII) *Whether an alternative rule, including a no-action alternative, would address the required standard.*

Other than retaining the federal standards, there is no regulatory alternative to adopting California LEV standards for Colorado. Assuming the proposed rollback of the federal standards occurs, no action would result in a significant increase in vehicle GHG emissions in Colorado.

To the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules result in a demonstrable reduction of emissions.

(III) Evidence in the record supports the finding that the rules bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

II. ADOPTED: August 16, 2019 (Adoption of ZEV Section as part of CLEAR)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act ("Act"), §§ 25-7-110 and 25-7-110.5, C.R.S. and the Air Quality Control Commission's ("Commission") Procedural Rules, 5 CCR 1001-1.

Basis

On January 17, 2019, Governor Jared Polis, by Executive Order B 2019 002, directed the Colorado Department of Public Health and Environment to develop and propose a regulation for the implementation of a Colorado Zero Emission Vehicle ("ZEV") program pursuant to Section 177 of the federal Clean Air Act, 42 U.S.C. § 7507. The Executive Order declared the need for adopting the ZEV program based upon the transportation sector's major contribution to air pollution. The Executive Order noted that transportation is one of two primary sources of ozone precursors and a leading source of greenhouse gas emissions. The Executive Order further clarified its intent as including the promotion of choice and lower costs for Coloradoans, while not imposing requirements upon sectors such as agriculture and related farming equipment such as tractors.

Prior to the Governor's Executive Order, at its November 15-16, 2018 hearing the Commission had asked the Air Pollution Control Division to develop for its consideration a proposed ZEV program for inclusion in the Colorado Low Emission Automobile Regulation.

Statutory Authority

Section 177 of the federal Clean Air Act ("CAA"), 42 U.S.C. § 7507, provides states the option of requiring compliance with approved California standards for vehicles sold within their borders. The Act at § 25-7-105(1), directs the Commission to promulgate emission control regulations consistent with the legislative declaration set forth in § 25-7-102 and in conformity with § 25-7-109. §§ 25-7-109(1)(a) and (2) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, and emission control regulations pertaining to carbon oxides. § 25-7-103 provides that such emission control regulations include, *inter alia*, design, equipment, or operational standards. § 25-7-106 further provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution.

The Colorado Legislature further bolstered the Commission's authority to adopt regulations to reduce greenhouse gas emissions in the 2019 legislative session. The Duties of the Commission, set forth in § 25-7-105 of the Act, now directs that the Commission, "shall consider the relative contribution of each source or source category to statewide greenhouse gas pollution" and specifies that in addressing greenhouse gas pollution the Commission may utilize "strategies that have been deployed in another jurisdiction [and] that facilitate adoption of technologies that have very low or zero emissions...among other regulatory strategies."

Purpose

The ZEV Program in Regulation Number 20, the Colorado Low Emission Automobile Regulation (CLEAR), incorporates the requirements of the California ZEV program. Pursuant to the requirements of the program, vehicle manufacturers selling vehicles in Colorado must also offer for sale zero emitting vehicles in order to generate compliance credits under the program. The requirements of the program apply only to light-duty vehicles (8500 lbs. or less) and begin with model-year 2023 vehicles.

Advancements in technology, availability and pricing of ZEVs has made increased utilization of such vehicles an effective strategy to reduce air pollution. Therefore, the Commission determines adoption of the ZEV Program as part of CLEAR will reduce vehicle emissions in Colorado in a manner that is demonstrated to be economically reasonable and technologically feasible. The Division has been evaluating the technological rationale and finds that by the 2023 model year, a ZEV standard for Colorado will be both economically reasonable and technologically feasible.

Statement regarding Federal Requirements

In accordance with C.R.S. §§ 25-7-105.1 and 25-7-133(3) the Commission states the rules in CLEAR adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado's State Implementation Plan (SIP). The Federal Clean Air Act, pursuant to §177 LEV states the option of adopting a ZEV standard for additional emissions benefit and fuel cost savings. There is no federal ZEV standard. As part of adopting the revisions to CLEAR, the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b). These factors are discussed in detail in the attendant Request for Hearing and Hearing documents.

To the extent that C.R.S. § 25-7-110.5(5)(b) requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

A Zero Emission Vehicle (ZEV) standard would ensure that a portion of each manufacturer's vehicles sold in Colorado are Zero Emission Vehicles as defined in the California ZEV standard. Battery electric vehicles (BEV) and fuel cell electric vehicles (FCEVs) have no criteria and greenhouse gas (GHG) tailpipe emissions.

(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;

The Clean Air Act grants authority to U.S. EPA to establish new vehicle emissions standards. California mandated its own emissions standards, predating the federal Act. Car manufacturers have been engineering to federal or California emissions for 50 years, with tremendous technological innovation during that time. CLEAR, which incorporated California's Low Emission Vehicle Standard (LEV III) is the current state of that technological development.

A Zero Emission Vehicle rule is technology-based and taps into rapidly-developing electric storage battery technology, which diverges from the conventional internal combustion engine vehicle technological development path. Coupled with improved high efficiency motors and controllers and parochial chassis development, ZEVs for model year 2023 will be efficient transportation for a segment of the general population. Market demand for ZEVs is growing globally, so the auto industry will step up to meet market demand as technology becomes available and cost-effective.

There is no flexibility in adoption of a ZEV standard. As with the LEV Rule, the incorporation by reference must strictly adopt Code of California Regulations, Title 13 Sections 1962.2 {and .3}. However, there is flexibility in the ability to grant early action credits for sales that take place prior to the effective date of the rule and to grant a one-time bank of proportional credits. All states adopting the California standard in the past fifteen years have issued one-time proportional ZEV credits to ensure that the impact of the standards is equal to their impact within the state of California. The market has evolved, and the impact of granting a one-time proportional credit bank today is much larger than it was at the time that other states adopted the ZEV standard. Colorado has the flexibility to adjust its enforcement program for the proposed ZEV standard—for example, by including early action credits and a modified bank of proportional credits—to ensure that there is no undue burden for automakers, while at the same time maintaining the efficacy of the standard, as well as consistency with the objective of prior Section 177 state practice.

(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;

There is no federal ZEV Rule. The Executive Order "Supporting a Transition to Zero Emission Vehicles", required the Colorado Department of Public Health and Environment to develop and propose a ZEV standard to the Commission by May 2019. Prior to this, the Commission voted 8-0 to direct CDPHE staff to propose a ZEV standard.

Colorado will implement the ZEV standard more than 20 years after California implemented the ZEV standard, and 10 to 20 years after other states that have implemented the ZEV standard. These states have established ZEV credit banks for each automaker, providing a one-time credit proportional to the credit bank in California. Issuing one-time proportional ZEV credits in Colorado ensures that the Colorado ZEV standard starts with the same regulatory conditions as California and reduces undue burden on the automakers, who must meet program requirements midway through their implementation. However, restricting the use during model years 2023-2025 of ZEV credits from the one-time transfer will ensure that the regulations will require additional ZEVs to be deployed in Colorado. Early action credits get ZEVs into Colorado even in advance of the standard taking effect.

The testimony at the hearing confirmed the filings before this Commission that the members of the Alliance of Automobile Manufacturers and Association of Global Automakers (which they state collectively represent more than 99 percent of light-duty vehicle sales in the United State) have agreed to support Colorado's Regulation Number 20 ZEV program, as reflected in the alternative adopted by the Commission, which was jointly proposed by the Colorado Energy Office (CEO), Colorado Department of Transportation (CDOT), the Alliance and Global Automakers. The Commission directs the Division, CDOT and CEO to monitor these efforts of support along with the generation and use of credits provided for in Regulation Number 20, and to report back to the Commission as necessary. The rule is intended to result in improved air quality in Colorado. Electric vehicles have no direct emissions, so they do not directly contribute to local air quality concerns in urbanized or other sensitive areas in Colorado. The emissions from electrical power generating plants are generally well controlled and mostly dispersed outside of Colorado's ozone nonattainment area. In addition, electrical power generation is becoming increasingly cleaner over time, as the state shifts to the use of renewable sources of energy. The passage of HB 19-1261 and SB 19-236 reinforce this move toward cleaner electrical generation, and are expected to lead to the state's largest utility reducing GHG emissions by 80% below 2005 levels by 2030.

Electric vehicles, unlike gasoline-powered vehicles, do not have emissions controls that deteriorate over time. Their indirect emissions become cleaner as their power sources become cleaner. The use of electric vehicles will result in direct emission reductions of particulate, carbon monoxide, volatile organic compounds, and other emissions compared to new model conventional motor vehicles. Vehicle lifetime emissions of nitrogen oxides will also be reduced, which along with reduced VOC emissions, will result in lower ozone concentrations. The ZEV Rule is projected to significantly reduce greenhouse gas emissions which are contributing to climate change, a concern of many Coloradoans. Additional adoption of electric vehicles and other ZEVs will lead to reductions in GHG emissions, particularly during the period after Model Year 2025, as the number of ZEVs increases.

(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;

The regulatory compliance requirement of the proposed rule falls on auto manufacturers. Colorado's ZEV standard will require a small percentage increase in overall ZEV production across the industry. Significantly, being part of the ZEV program enables manufacturers to accrue credits in the market for ZEVs sold in Colorado, which is itself a strong positive incentive to make ZEVs available in the Colorado market. Experience has demonstrated that without the program structure in place, manufacturers may be incentivized to prioritize their ZEV allocations to other states where program credits are available for sales. A grant of proportional credits will make it easier to phase in compliance with the ZEV standard and increases certainty for manufacturers by providing them with a set of starting credits (beginning with a percentage use cap in model year 2023) proportional to what they presently have earned in California. In addition, the early action credits option will spread the compliance requirement.

(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirement;

The federal administration formally proposed alternatives for the 2021 GHG standards on August 2, 2018 that significantly reduce the stringency of the existing GHG standards for model years 2021-2025, and also considers revoking California's waiver to set their own GHG and ZEV standards.

However, while ZEV and LEV were both addressed as part of a single 2013 EPA waiver for California's Advanced Clean Cars Program, it is important to note that discrete elements considered within the 2013 waiver incorporated past waivers that were based on both a variety of justifications and different waiver types, such as GHG emissions and criteria pollutants.

The federal Clean Air Act, Section 177, allows a state to adopt California new car emissions standards. Section 177 mandates a two-model-year minimum lead time prior to requiring the California standards. For Colorado to maximize the benefits from this new rule, it should be adopted before January 1, 2020 in order to be effective for the 2023 Model Year, which will begin to be introduced in 2022. Manufacturers choosing the early action compliance option can begin earning, banking, and trading ZEV credits starting with sales of model year 2021 vehicles, which began as early as January 2, 2020. This early action compliance option is expected to yield earlier benefit to Coloradans as well as flexibility for manufacturers.

(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;

As the Colorado vehicle fleet turns over and zero emission vehicles are brought into use to replace older internal combustion-engine vehicles, overall emissions are reduced, which will align with meeting federal ozone standards as the Front Range grows.

The proposed rule will reduce GHG emissions in support of Colorado's Climate Action Plan and legislatively adopted goals. As Colorado moves toward implementation of HB 19-1261, deep reductions in GHG emissions from transportation will be required in order to reach economy-wide goals of 50% reduction below 2005 levels by 2030 and 90% by 2050. Adoption of a ZEV standard that accelerates adoption of ZEVs will reduce the stringency of future efforts that will be required to meet these goals.

The provision of proportional and early credits will also ensure that there is a reasonable accommodation for automakers for uncertainty and future growth. ZEV standards for model years beyond 2025 have not yet been set by California, and have the potential to completely change the nature of the ZEV standard program at the time they are instituted. The grant of proportional and/or early credits allows automakers to produce and deliver the same portion of ZEVs in Colorado as in California, and provides them a better margin to handle future uncertainty and changes.

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

The proposed rule affects a single source category, Mobile Sources. Therefore, there are no equity issues between various sources. Other source categories including electricity generation and oil and gas production have been the subject of multiple state regulatory and legislative actions to reduce both GHG emissions and ozone precursors, and multiple regulatory proceedings are expected over the next two years at the Commission and the Public Utilities Commission affecting these sources.

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

As a contributor to ozone non-attainment and climate change, mobile source emissions represent a cost to Coloradoans and Colorado businesses. In order to meet the goals of ozone attainment and legislatively mandated goals for reduction of GHG emissions, emissions reductions not gained from the proposed ZEV standard may need to be taken from other industries.

(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;

There will be some additional monitoring, credit accounting, and reporting requirements, although vehicle manufacturers are already meeting those accountability requirements in nine other states and California. There will be additional workload on state staff, performing surveillance and enforcement, and monitoring vehicle sales and registrations.

(X) Whether demonstrated technology is available to comply with the proposed requirement;

The Division has reviewed the body of current scientific literature demonstrating the availability of ZEV technology to comply with the ZEV Rule based on existing and maturing technologies. Information supporting this conclusion has been provided into the record for the rulemaking.

(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain;

The proposed requirement will contribute to the prevention of pollution as light-duty vehicles shift from liquid fuels (gasoline and diesel) to electricity. Colorado motorists will be the beneficiaries of reduced 'fuel' and maintenance costs, resulting in a cost savings over the life of a ZEV car. As technology and production capacities shift, cost should continue to drop.

As electric energy from the grid continues to trend cleaner going forward, ZEV emissions benefit effectively increases with time.

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

Other than maintaining the status quo, there is no regulatory alternative to adopting the California ZEV standards for Colorado. No action would maintain the status quo, and since there is no federal ZEV program, the rate of ZEV adoption will be slower in 2023 and beyond. This would result in the loss of program benefits in terms of greenhouse gas emission reductions, and higher sustained ozone levels in the non-attainment area. Colorado ZEV standards that include a grant of proportional credits, with restrictions on their use during model years 2023-2025, and early action credits ensure that automakers can efficiently transition to meeting the standard while expanding the growth of ZEVs in Colorado.

To the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules result in a demonstrable reduction of emissions.

(III) Evidence in the record supports the finding that the rules bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules. The evidence and testimony presented claiming that air emissions, gasoline prices, and electrical rates will rise as a result of this regulation was not convincing.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

Since the matter was set for hearing on May 10, 2019, the Commission has received thousands of public comments on the proposal, including a petition with more than 8800 signatures urging consideration of a ZEV standard; a mass email campaign from more than 2500 individuals who supported adopting the rule; separate emails or letters from more than 170 other individuals; and a number of letters from business and trade organizations and from environmental or public interest groups that were not parties to the rulemaking. The Commission also heard oral public comment on the proposal on August 13, 2019, with approximately 60 people speaking. A strong majority of the written comments from individuals supported adoption of a ZEV program.

Comments from individuals and groups supporting adoption generally cited the need to reduce emissions of criteria pollutants and/or greenhouse gases, and the desire for more electric vehicle models to be offered in the State. Comments from individuals and groups in opposition to the ZEV program generally expressed preference for technology-neutral approaches and/or concern about potentially increased vehicle and energy costs that they believed might extend beyond ZEV purchasers. A strong majority of the oral public comments were in support of adoption of the ZEV standard for similar reasons as those expressed in the written comments. Very few oral commenters were in opposition to the ZEV standard and cited a preference for a technology-neutral approach.

III. ADOPTED: August 19, 2021 (Revisions to Regulation Number 20 - Colorado Low Emission Automobile Regulation)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act ("the Act") §§ 25-7-110 and 25-7-110.5, C.R.S.

Basis

Regulation Number 20 was adopted to implement California Low Emission Vehicle ("LEV") standards for new vehicles in Colorado. The Air Quality Control Commission ("Commission") choose, in establishing Regulation Number 20, to adopt California new vehicle standards in place of the then existing federal new vehicle standards. Under the Section 177 of the Clean Air Act ("CAA"), Colorado has the choice of adopting Federal or California Standards. Subsequently, the Commission adopted a Zero Emission Vehicle ("ZEV") program that is a component of California's Advanced Clean Car program. This satisfies the requirements of Governor Polis' Executive Order B 2019 002.

Adoption of California new vehicle emissions standards and ZEV requirements allowed Colorado to maintain the emissions benefits for newly manufactured motor vehicles that would have been lost by maintaining federal standards, which were subject to a rollback of new vehicle emissions standards. This loss of future emissions benefit from new vehicles would be counter to Governor Polis' Executive Order B 2019 002 on zero emission vehicles and the need to control greenhouse gas emissions and lower ozone concentrations

An update to Regulation Number 20, the Colorado Low Emission Automobile Regulation, was adopted in this rulemaking to replace some outdated incorporation by references with the most current ones contained in California's Code of Regulations. Also adopted is the reorganization of Regulation Number 20, Part B.VII, addressing aftermarket catalytic converters, to its own new section entitled, "Part C, Aftermarket Exhaust Treatment Devices," with a renumbering of all sections following the new Part C. Finally, the Commission adopted a minor correction to the definition of "California credit ratio" contained in Part A.II.E., and deleted the word "California" in newly renumbered Part D.V.A.

Specific Statutory Authority

Section 177 of the CAA, 42 U.S.C. § 7507, provides states the option of requiring compliance with approved California standards for vehicles sold within their borders. The Act at § 25-7-105(1), directs the Commission to promulgate emission control regulations consistent with the legislative declaration set forth in § 25-7-102 and in conformity with § 25-7-109. §§ 25-7-109(1)(a) and (2) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, and emission control regulations pertaining to carbon oxides. § 25-7-103 provides that such emission control regulations include, inter alia, design, equipment, or operational standards. § 25-7-106 further provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution.

Purpose

The purpose of the proposed changes is to update references pertaining to California's Low Emission Vehicle ("LEV") and ZEV Program. Adoption of these updated references will allow Regulation Number 20 to enforce current California LEV and ZEV Program technical requirements. Reorganizing aftermarket exhaust treatment devices into their own separate section streamlines the regulation and improves structure and user access to various parts of the regulation.

Federal vs. State-Only Conditions (if applicable)

In accordance with C.R.S. §§ 25-7-105.1 and 25-7-133(3), the Commission states the rules in CLEAR adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado's State Implementation Plan ("SIP"). They are administrative in purpose.

Findings pursuant to C.R.S. 25-7-110.5(5)

Under Section 177 of the CAA (42 U.S.C. § 7507), Colorado had the choice of adopting federal standards or California standards for new vehicles. On August 16, 2019, the Commission adopted Regulation Number 20 to implement California LEV standards for new vehicles in Colorado. The Commission choose, in establishing Regulation Number 20, to adopt California new vehicle standards in place of the then-existing federal new vehicle standards. The Commission subsequently adopted a ZEV program that is a component of California's overall LEV program.

The Division's proposed updates to Regulation Number 20 do not alter the Commission's decision in adopting Regulation Number 20. The Division proposes to incorporate by reference technical updates found within California's Code of Regulations. The Division must periodically incorporate by reference technical updates to California's new vehicle emission standards and ZEV requirements to ensure that Colorado's program is administered in conformity with California's standards. The Commission therefore finds that the Division's proposed regulatory modifications to Regulation Number 20 do not substantively alter, amend, or add requirements different from the federal act or rules thereunder.

Findings pursuant to C.R.S. § 25-7-110.8

Colorado must reduce greenhouse gas emissions to address global warming concerns. This is reflected in Governor Polis' Executive Order B 2019 002 on zero emission vehicles, and by House Bill 19-1261 *Climate Action Plan to Reduce Pollution*, under C.R.S. § 25-7-105.1.e, that directs the Commission to promulgate rules and regulations that advance GHG reductions that are in accordance with the act's stated GHG reduction goals.

The Commission hereby makes the determination that:

a. The rule is based on reasonably available, validated, reviewed, and sound scientific methodologies.

b. The rule shall result in a demonstrable reduction in air pollution (unless the rule is administrative in nature).

c. The rule is the most cost effective alternative, or provides an analysis detailing why the alternative is unacceptable.

d. The rule maximizes air quality benefits in the most cost-effective manner.

Further, the Commission corrected any typographical, grammatical, and formatting errors found within the regulation.

IV. ADOPTED: April 21, 2023 (Revisions to Regulation Number 20 - Colorado Advanced Clean Truck and Low NOx Standards).

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act ("the Act") §§ 25-7-110 and 25-7-110.5, C.R.S.

Basis

Regulation Number 20 was adopted to implement the following new requirements: 1) Advanced Clean Truck ("ACT") standards for new, medium and heavy duty vehicles; 2) Low Nitrogen Oxide ("Low NOx") standards for new heavy duty vehicles; and 3) Large Entity Reporting requirements. The new ACT and Low NOx requirements were adopted through the incorporation of California regulatory requirements by reference. In addition, adding complementary regulatory text to Regulation Number 20 provides a fuller explanation of how the programs work; clarifies that the regulations adopted by reference apply to new vehicle sales and fleet reporting in Colorado, and to provides explanation that violations of the requirements would be addressed through Colorado specific penalty provisions set forth in Colorado statute. In addition, the revisions update existing incorporations by reference to California rules adopted in prior rulemakings in order that the Colorado requirements match the latest versions of California regulations. Finally, the revisions re-organize and clarify existing provisions, and correct typographical errors. These last set of revisions are non-substantive and are aimed at improving the readability of existing requirements.

The Air Quality Control Commission ("Commission") chose, in updating Regulation Number 20, to adopt California new vehicle standards in place of the then existing federal new vehicle standards. The Commission further decided to adopt LER in order to obtain information regarding vehicles at large fleets in Colorado, to better assess other potential vehicle emission reduction strategies. Under Section 177 of the Clean Air Act ("CAA"), Colorado has the choice to adopt California Standards in lieu of being subject to federal vehicle standards.

The Commission has authority under Colorado law to adopt California standards as well as reporting requirements for Colorado fleets. The Commission adopted ACT and Low NOx standards based on its determination that these standards would provide cost-effective emission reduction benefits relative to the Federal Standards.

Specific Statutory Authority

Section 177 of the CAA, 42 U.S.C. § 7507, provides states the option of mandating compliance with approved California standards for vehicles sold within their borders. The Act at § 25-7-105(1), directs the Commission to promulgate emission control regulations consistent with the legislative declaration set forth in § 25-7-102 and in conformity with § 25-7-109. §§ 25-7-109(1)(a) and (2) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, and emission control regulations pertaining to carbon oxides, nitrogen oxides, and particulates. § 25-7-103 provides that such emission control regulations include, inter alia, design, equipment, or operational standards. § 25-7-106 further provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary, or desirable, to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. Finally, § 25-7-106 authorizes the Commission to require that air pollution sources provide information that the Commission may require, and to exercise all incidental powers that may be necessary to carry out the purposes of Article 7.

Purpose

The purpose of the changes is to incorporate references pertaining to California's ACT, and Omnibus Low NOx standards, and adopt Colorado specific LER standards. Adoption of these provisions will aid the state in achieving its greenhouse gas emission reduction goals; reduce ozone precursor emissions; reduce harmful direct exposure to pollutants from medium and heavy duty trucks including emissions that negatively affect disproportionately impacted communities; and provide information on fleet vehicles in Colorado that will be helpful in assessing potential emission reduction strategies from vehicles in Colorado. The Commission believes that, in addition to helping the Division assess potential emission reduction strategies, the information gathered under the LER may be useful to other stakeholders and the general public. The Commission notes that this information should be publicly available consistent with the confidentiality provisions of the Colorado Open Records Act. Further, in implementing the LER the Commission expects that the Division will work with interested stakeholders to ensure that the public information gathered under the LER is published in an expeditious manner. These revisions update existing incorporations by reference so that the Colorado new vehicle program applies the most recent version of applicable California regulations. Finally, these additions clarify and slightly reorganize existing Regulation Number 20 provisions, and make typographical corrections.

Federal vs. State-Only Conditions

In accordance with C.R.S. §§ 25-7-105.1 and 25-7-133(3), the Commission states the ACT, Low NOx, and LER rules adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado's State Implementation Plan ("SIP").

Findings pursuant to C.R.S. 25-7-110.5(5)

Under Section 177 of the CAA (42 U.S.C. § 7507), Colorado has the choice of being subject to federal standards or adopting California standards for new vehicles. On April 21, 2023, the Commission adopted revisions to Regulation Number 20 to incorporate by reference the California Advanced Clean Trucks, and Low NOx Omnibus programs, along with adopting Large Entity Reporting requirements. These incorporations by reference, the adoption of reporting requirements, along with clarifying and explanatory regulatory text, create the Colorado ACT, Low NOx, and LER programs.

The Commission also incorporated more recent versions of California regulations that had previously been adopted to create Colorado's light duty new vehicle program and implement California LEV standards for new vehicles in Colorado. The Commission chose, when establishing Regulation Number 20, to adopt California new vehicle standards in place of the then-existing federal new vehicle standards. These requirements were incorporated and adopted consistent with Section 177 of the CAA. While there are Federal standards for the reduction of NOx and other pollutants from heavy duty vehicles, the Federal Clean Air Act pursuant to §177 gives states the option of adopting California vehicle standards. There are no federal standards analogous to ACT or LER. Accordingly, these regulatory revisions should not be considered to be exceeding or differing from the federal act or federal rules. But to the extent that C.R.S. § 25-7-110.5(5)(b) requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

There are Federal standards governing NOx emissions from new heavy duty vehicles that are analogous to the requirements in the Low NOx program. The Federal standards are less stringent, and thus provide less emission reduction benefits of ozone precursor emissions and emissions that directly impact Colorado residents exposed to vehicle exhaust.

(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;

The Clean Air Act grants authority to the U.S. EPA to establish new vehicle emissions standards. EPA has adopted NOx standards for new heavy duty vehicles that set performance based emission standards. There are flexibility mechanisms contained within the federal requirements including allowances for cold weather operations, how engines are tested, averaging provisions, and credit allowances.

(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;

There are no federal ACT or LER programs. The Federal Low NOx program achieves emission reductions from heavy duty vehicles, but the Colorado Low NOx requirements will achieve greater reductions of ozone precursor emissions that are important to help Colorado attain National Ambient Air Quality Standards for ozone as well as reduce the harmful effects of direct exposure to these pollutants, especially important to help Colorado achieve its ambitious environmental justice goals. In developing its rules, it does not appear that EPA specifically considered Colorado's air quality challenges.

(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;

The regulatory compliance requirements of ACT and Low NOx programs fall on vehicle manufacturers. These requirements are already in place in California and other states, therefore the manufacturers are already aware of these requirements. The requirements are intended to achieve additional emission reductions, and are not intended to clarify conflicting requirements, or increase certainty, or prevent the need for costly retrofit. Evidence in the record indicates that the Colorado ACT and Low NOx programs are cost effective and will achieve significant emission reductions.

The ACT program will ultimately result in significant savings to consumers in the form of reduced fuel and maintenance costs. There are mechanisms in both sets of rules to provide flexibility to manufacturers that will allow them to comply in a more cost effective manner. There was no information in the record that costs to manufacturers to comply will be less than under existing federal rules.

(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirement;

There is not a timing issue with respect to the Federal rule. However, Section 177 of the CAA mandates a two-model-year minimum lead time prior to requiring compliance with California standards. For Colorado to maximize the benefits from ACT and Low NOx new rule, they needed to be adopted before January 1, 2024 in order to be effective for the 2027 Model Year, which will begin to be introduced in 2026.

(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;

As the Colorado vehicle fleet turns over and zero emission vehicles are brought into use to replace older internal combustion-engine vehicles, overall emissions are reduced, which will align with meeting federal ozone standards as the Front Range grows. The proposed rule reduces GHG emissions in support of Colorado's Climate Action Plan and legislatively adopted goals. As Colorado moves toward implementation of HB 19-1261, deep reductions in GHG emissions from transportation will be required to reach economy-wide goals of 50% reduction below 2005 levels by 2030 and 90% by 2050. Adoption of a ACT standard that accelerates adoption of zero emission trucks will reduce the stringency of future efforts that will be required to meet these goals.

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

The proposed rule affects a single source category, Mobile Sources. Therefore, there are no equity issues between various sources. Other source categories including electricity generation and oil and gas production have been the subject of multiple state regulatory and legislative actions to reduce both GHG emissions and ozone precursors, and multiple regulatory proceedings are expected over the next two years at the Commission and other regulatory venues affecting these sources.

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

As a contributor to ozone nonattainment and climate change, mobile source emissions represent a cost to Coloradoans and Colorado businesses. In order to meet the goals of ozone attainment and legislatively mandated goals for reduction of GHG emissions, emissions reductions not gained from the ACT and Low NOx programs may need to be taken from other industries and emission sources.

(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;

For ACT and Low NOx requirements, there will be additional or different monitoring, credit accounting, and reporting requirements, although vehicle manufacturers are already meeting those accountability requirements in California and other states that have adopted California standards. Adoption of these different requirements is essential so that the Colorado program has consistent requirements with California and other states that adopted these standards to create certainty and consistency for the regulated entities. There are no Federal reporting requirements equivalent to LER. Adoption of LER is vital to provide Colorado with additional information about large motor vehicle fleets in order to evaluate potential other vehicle emission reduction strategies.

(X) Whether demonstrated technology is available to comply with the proposed requirement;

The Division has reviewed the body of current scientific literature demonstrating the availability of technology to comply with both the ACT and Low NOx programs. These programs are already being implemented successfully in California and other states. California did an extensive analysis of the feasibility of these standards prior to adoption of their rules. Information supporting this conclusion has been provided in the record for the rulemaking.

(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain;

The proposed requirement will contribute to the prevention of significant amounts of pollution from the medium and heavy duty vehicle fleet as demonstrated by evidence introduced into the record during the rulemaking. The ACT program will result in a significant cost savings to consumers in the form of decreased fuel and maintenance costs. As technology and production capacities shift, costs should continue to drop.

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

Other than maintaining the status quo, there is no regulatory alternative to adopting the California ACT and Low NOx standards for Colorado. No action would maintain the status quo of a less protective Federal Low NOx rule, with no corresponding Federal ACT or LER program. This would result in more pollution in Colorado from the medium and heavy duty vehicle fleet, and the need to achieve emission reductions from other sources in order to meet ozone standards and reduce greenhouse gas emissions to achieve Colorado's GHG reduction goals. Additionally, maintaining the status quo would reduce the effectiveness of Colorado's environmental justice goals, by increasing emissions in communities that are disproportionately impacted by medium and heavy duty vehicle emissions.

Findings pursuant to C.R.S. § 25-7-110.8

a. These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

b. Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of greenhouse gasses related to building performance.

c. Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

d. The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

e. The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

V. ADOPTED: October 20, 2023 (Revisions to Regulation Number 20 - Colorado Clean Cars and Trucks Standards)

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 ("the Act") Sections 25-7-110 and 25-7-110.5, C.R.S.

Basis

Revisions to Regulation Number 20 were adopted to update Colorado emission requirements applicable to the sale of new light and medium vehicles in the state. Previous provisions adopted by the Commission established requirements applicable through vehicle model year 2025. The new provisions establish more stringent standards for model years 2027-2032 light and medium duty vehicles. These new requirements were adopted through the incorporating California regulatory requirements by reference, and adding complementary regulatory text to Regulation Number 20 to better explain how the programs work, to clarify that the regulations adopted by reference apply to new vehicle sales and fleet reporting in Colorado, and to provide that violations of the requirements would be addressed through Colorado specific penalty provisions set forth in Colorado statute. In addition, the revisions update existing incorporations by reference of California rules adopted in prior rulemakings so that the Colorado requirements match the latest versions of California regulations. Finally, the revisions re-organize and clarify existing provisions, and correct typographical errors. This includes an update to regulatory requirements governing after-market catalytic converters, clarifying that these requirements only apply to vehicles with spark ignition engines. These last set of revisions are non-substantive and are aimed at improving the readability of existing requirements.

In updating Regulation Number 20, the Air Quality Control Commission ("Commission") chose to adopt California new vehicle standards for model year 2027-2032 light and medium duty vehicles in place of existing federal new vehicle standards. Under Section 177 of the Clean Air Act ("CAA"), Colorado has the choice of adopting California Standards in lieu of being subject to federal vehicle standards. The Commission has authority under Colorado law to adopt California Standards. The Commission adopted the zero emission vehicle (ZEV) and low emission vehicle (Low) standards based on its determination that these standards would provide cost-effective emission reduction benefits relative to the Federal Standards, and that these additional emission reductions were needed to address Colorado air quality and climate change goals. The Commission recognizes that parties to this rulemaking provided evidence regarding the benefits of adopting standards though model year 2035. The Commission considered this evidence but ultimately chose to adopt standards through 2032. Notwithstanding this decision, the Commission agrees that further evaluation of whether Colorado should adopt the standards through 2035 is warranted. Accordingly, the Commission directs the Division to do an assessment of the costs, benefits, and feasibility of adopting additional model year standards, and determine whether to proceed with requesting a rulemaking. The Commission further intends that the assessment start no later than January 2028 and that the Division report back to the Commission on its findings by the end of 2028. If a rulemaking moves forward, the Commission intends that the rulemaking be completed on a schedule that would allow Colorado to be covered under ACC II standards for model year 2033 and beyond.

Specific Statutory Authority

Section 177 of the CAA, 42 U.S.C. § 7507, provides states the option of requiring compliance with approved California standards for vehicles sold within their borders. The Act at Section 25-7-105(1), directs the Commission to promulgate emission control regulations consistent with the legislative declaration set forth in Section 25-7-102 and in conformity with Section 25-7-109. Sections 25-7-109(1)(a) and (2) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, and emission control regulations pertaining to carbon oxides, nitrogen oxides, and particulates. Section 25-7-103 provides that such emission control regulations include, inter alia, design, equipment, or operational standards. Section 25-7-106 further provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. Section 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution.

Purpose

The purpose of the changes is to incorporate references pertaining to California's Advanced Clean Cars II standards for model years 2027-2032. Adoption of these provisions will aid the state in achieving its greenhouse gas emission reduction goals, reduce ozone precursor emissions, and limit harmful direct exposure to pollutants from light and medium duty vehicles including emissions that negatively affect disproportionately impacted communities Colorado. These revisions also update existing incorporations by reference so that the Colorado new vehicle program applies the most recent version of applicable California regulations. Finally, these additions clarify and slightly reorganize existing Regulation Number 20 provisions, and make typographical corrections.

Federal vs. State-Only Conditions

In accordance with C.R.S. §§ 25-7-105.1 and 25-7-133(3), the Commission states the ZEV and LEV rules adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado's State Implementation Plan ("SIP").

Findings pursuant to C.R.S. 25-7-110.5(5)

Under Section 177 of the CAA (42 U.S.C. § 7507), Colorado has the choice of being subject to federal standards or adopting California standards for new vehicles. The Commission adopted these revisions to Regulation Number 20 to incorporate by reference the California Advanced Clean Cars II standards for model year 2027-2032 light and medium duty vehicles. These incorporations by reference, along with clarifying and explanatory regulatory text create the next generation of Colorado Clean Cars standards. The Commission also incorporated more recent versions of California regulations that had previously been adopted in prior rulemakings. The Commission chose, in amending Regulation Number 20, to adopt California new vehicle standards in place of existing federal new vehicle standards. These requirements were incorporated and adopted consistent with Section 177 of the CAA

While there are Federal standards for the reduction of nitrogen oxides (NOx), volatile organic compound (VOC), greenhouse gases (GHG) and other pollutants from light and medium duty vehicles, the Federal Clean Air Act, pursuant to §177 gives states the option of adopting California vehicle standards. There are no federal standards analogous to the ZEV component. Accordingly, these regulatory revisions should not be considered to be exceeding or differing from the federal act or federal rules. But to the extent that C.R.S. § 25-7-110.5(5)(b) requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

There are Federal standards governing NOx, VOC, particulate matter, GHG and other emissions from new light and medium duty vehicles that are analogous to the requirements in the LEV component of the Colorado Clean Cars program. The Federal standards are less stringent, and thus provide less emission reduction benefits of ozone precursor emissions and emissions that directly impact Colorado residents exposed to vehicle exhaust. There are no federal standards analogous to the ZEV component of Colorado Clean Cars.

(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;

The Clean Air Act grants authority to U.S. EPA to establish new vehicle emissions standards. EPA has adopted criteria pollutant and GHG requirements for new light and medium duty vehicles that set performance based emission standards. There are flexibility mechanisms contained within the federal requirements including allowances for cold weather operations, how engines are tested, averaging provisions, and credit allowances.

(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;

There is no federal ZEV program for light and medium duty vehicles. The federal program establishes emission standards for NOx, VOC, particulate matter, GHG and other pollutants, but the Colorado LEV requirements will achieve greater reductions of ozone precursor emissions that are important to help Colorado attain National Ambient Air Quality Standards for ozone as well as reduce the harmful effects of direct exposure to these pollutants that is important to help Colorado achieve its ambitious environmental justice goals. In developing its rules, it does not appear that EPA specifically considered Colorado’s air quality challenges.

(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;

The regulatory compliance requirements of the Colorado Clean Cars and Trucks program fall on vehicle manufacturers. These requirements are already in place in California and other states, so the manufacturers are already aware of these requirements. The requirements are intended to achieve additional emission reductions, and are not intended to clarify conflicting requirements, or increase certainty, or prevent the need for costly retrofit. At the same time, evidence in the record indicates that the new ZEV and LEV requirements for model year 2027-2032 light and medium duty vehicles are cost effective and will achieve significant emission reductions above and beyond federal standards. The new requirements will ultimately result in significant savings to consumers in the form of lower upfront vehicle costs, and reduced fuel and maintenance costs. There are mechanisms in both sets of rules to provide flexibility to manufacturers that will allow them to comply in a more cost effective manner.

(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirement;

There is not a timing issue with respect to the federal rule. However, Section 177 of the CAA mandates a two-model-year minimum lead time prior to requiring compliance with California standards. For Colorado to maximize the benefits from the new requirements, they needed to be adopted before January 1, 2024 in order to be effective for the 2027 model year, which will begin to be introduced in 2026.

(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;

As the Colorado vehicle fleet turns over and cleaner conventional fueled vehicles and zero emission vehicles are brought into use to replace older internal combustion-engine vehicles, overall fleet emissions will be reduced, which will align with meeting federal ozone standards as the Front Range grows as well as aid the state in meeting its ambitious greenhouse gas emission reduction goals.

The proposed rule will reduce GHG emissions in support of Colorado's Climate Action Plan and legislatively adopted goals. As Colorado moves toward implementation of HB 19-1261, deep reductions in GHG emissions from transportation will be required in order to reach economy-wide goals of 50% reduction below 2005 levels by 2030 and 90% by 2050. Adoption of a ZEV standard that accelerates adoption of zero emission vehicles will reduce the stringency of future efforts that will be required to meet these goals.

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

The proposed rule affects a single source category, mobile sources. Therefore, there are no equity issues between various sources. Other source categories including electricity generation and oil and gas production have been the subject of multiple state regulatory and legislative actions to reduce both GHG emissions and ozone precursors, and multiple regulatory proceedings are expected over the next two years at the Commission and other regulatory venues affecting these sources.

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

As a contributor to ozone non-attainment and climate change, mobile source emissions represent a cost to Coloradoans and Colorado businesses. In order to meet the goals of ozone attainment and legislatively mandated goals for reduction of GHG emissions, emissions reductions not gained from the LEV and ZEV programs may need to be taken from other industries and emission sources.

(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;

There will be some additional or different monitoring, credit accounting, and reporting requirements, although vehicle manufacturers are already meeting those accountability requirements in California and other states that have adopted California standards. Adoption of these different requirements is essential so that the Colorado program has consistent requirements with California and other states that have adopted these standard to create certainty and consistency for the regulated entities.

(X) Whether demonstrated technology is available to comply with the proposed requirement;

The Division has reviewed the body of current scientific literature demonstrating the availability of technology to comply with both the LEV and ZEV ACT programs. These programs are already being implemented successfully in California and other states, and California did an extensive analysis of the feasibility of these standards prior to adoption of their rules. Information supporting this conclusion has been provided into the record for the rulemaking.

(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain;

The proposed requirement will contribute to the prevention of significant amounts of pollution from the light and medium and heavy duty vehicle fleet as demonstrated by evidenced introduced into the record during the rulemaking. The ZEV program will result in a significant cost savings to consumers in the form of decreased fuel and maintenance costs, as well as reduced upfront vehicle costs for the majority of the model years and vehicles impacted by the program. As technology and production capacities shift, costs should continue to drop.

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

Other than maintaining the status quo, there is no regulatory alternative to adopting the California standards for Colorado. No action would maintain the status quo of a less protective federal program. This would result in more pollution in Colorado from the light and medium duty vehicle fleet, and the need to achieve emission reductions from other sources in order to meet ozone standards, and reduce greenhouse gas emissions to achieve Colorado's GHG reduction goals. Additionally, maintaining the status quo would reduce the effectiveness of Colorado's environmental justice goals, by increasing emissions in communities that are disproportionately impacted vehicle emissions.

Findings pursuant to C.R.S. § 25-7-110.8

a. These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

b. Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of greenhouse gases and criteria pollutants.

c. Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

d. The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

e. The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

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Tracking number: 2023-00417

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

Air Quality Control Commission

on 10/20/2023

5 CCR 1001-24

REGULATION NUMBER 20 COLORADO LOW EMISSION AUTOMOBILE REGULATION

The above-referenced rules were submitted to this office on 10/26/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 06, 2023 11:30:47

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-31

Rule title

5 CCR 1001-31 REGULATION NUMBER 27 Greenhouse Gas Emissions and Energy Management for the Manufacturing Sector 1 - eff 12/15/2023

Effective date

12/15/2023

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 27

Greenhouse Gas Emissions and Energy Management for Manufacturing

5 CCR 1001-31

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

Outline of Regulation

Pursuant to Colorado Revised Statutes § 24-4-103 (12.5), materials incorporated by reference are available for public inspection during normal business hours, or copies may be obtained at a reasonable cost from the Air Quality Control Commission (the Commission), 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. The material incorporated by reference is also available through the United States Government Printing Office, online at www.govinfo.gov. Materials incorporated by reference are those editions in existence as of the date indicated and do not include any later amendments.

PART A General Provisions

I. Purpose and Applicability

I.A. The purpose of this regulation is to require manufacturing stationary sources to reduce greenhouse gas emissions pursuant to § 25-7-105(1)(e), C.R.S., (2023).

I.B. This regulation applies to manufacturing stationary sources with annual direct emissions equal to or greater than 25,000 metric tons of CO2e per year, as reported pursuant to Regulation Number 22, Part A. Once a manufacturing stationary source reports annual direct GHG emissions equal to or greater than 25,000 metric tons of CO2e per year, as reported pursuant to Regulation Number 22, Part A, or U.S. Environmental Protection Agency's (EPA) Greenhouse Gas Reporting Program (Title 40, Part 98, of the Code of Federal Regulations (CFR)) (Part 98), on or after the year 2015, the requirements of Regulation Number 27 continue to apply even if the source reports less than 25,000 metric tons of CO2e in direct GHG emissions for any year thereafter.

I.C. If any section, clause, phrase, or standard contained in this regulation is for any reason held to be inoperative, unconstitutional, void, or invalid, the validity of the remaining portions thereof will not be affected and the Commission declares that it severally passed and adopted these provisions separately and apart.

II. Definitions

II.A. "2015 GHG emissions" means the direct emissions reported in metric tons of CO2e by a GEMM 2 facility to the EPA's Greenhouse Gas Reporting Program (40 CFR, Part 98, Subparts C through JJ), for calendar year 2015.

II.B. "2030 social cost of GHGs" means for carbon dioxide, $89 per metric ton of carbon dioxide; for methane, $2,500 per metric ton of methane; for nitrous oxide, $33,000 per metric ton of nitrous oxide; and for all other greenhouse gases, the corresponding cost of CO2e.

II.C. "Additional emissions reductions" means GHG emission reductions that exceed any GHG emission reductions otherwise required by law, regulation, or legally binding mandate.

II.D. "Alternate account representative" means an individual designated pursuant to Part D, Section II.C. to take actions on the manufacturing stationary source' accounts.

II.E. "Annual emissions limitation" means the number of metric tons of CO2e an EITE stationary source may emit as calculated in Part C, Section III.A.1.

II.F. "Auction" means the process of creating a market for the sale of GHG credits by taking bids from potential GHG credit buyers, taking offers from potential GHG credit sellers, determining which GHG credits buyers purchased, determining how many GHG credits will be sold and to which buyers, and determining the auction settlement price. The auction will not collect payment from winning bidders but will instead instruct buyers to which sellers they must direct payment.

II.G. "Auction administrator" means the Division or the Division's agent charged with administering an annual auction for the voluntary sale of GHG credits.

II.H. "Auction settlement price" means the price announced by the auction administrator at the conclusion of each annual auction pursuant to Part D, Section IV.

II.I. "Audit plan" means the proposed audit scope, timelines and team submitted by the EITE stationary source to the Division for approval pursuant to Part C.

II.J. "Audit report" means the resulting document from the audit containing all the information and data required under Part C.

II.K. "Audit scope" means the GHG emission units and the energy consumption sources included in the energy and emissions control audit and identified in the approved audit plan.

II.L. "Audit team" means one or more persons performing the audit. The audit team must consist of at least one qualified third-party auditor. Additional capabilities and knowledge of the audit team must include, but are not limited to, technical expertise with specific operating and maintenance practices for the industry being audited; expertise in conducting GHG and energy management system audits; and expertise of the EITE stationary source's domestic and international market. The audit team must include individual(s) with documented audit expertise in the relevant industrial sector.

II.L.1. A bachelor's level college degree or equivalent in science, technology, business, statistics, math, environmental policy, economic, or financial auditing; or evidence demonstrating completion of significant and relevant work experience or other personal development activities that have provided the applicant with the communication, technical, and analytical skills to conduct audit; and

II.L.2. Sufficient workplace experience to act as an auditor, including a minimum two years of full-time experience in a professional role that involved emissions data management, emissions technology, emissions inventories, environmental auditing or other technical skills necessary to conduct the audit.

II.M. "Carbon dioxide equivalent" (CO_2e) means a standard used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP). The CO_2e is determined by multiplying the mass amount of emissions (metric tons per year), for each GHG constituent by that gas's GWP, codified in 40 CFR Part 98, Subpart A, Table A-1 (as of December 11, 2014), and summing the resultant values to determine CO_2e (metric tons per year).

II.N. "Certification body" means a professional organization that has been accredited to issue lead auditor certifications for a specific sector or to a specific standard.

II.O. "Co-benefits" means the additional benefits associated with the reduction of harmful air pollutants to local communities, including localized air quality benefits.

II.P. "Colorado EnviroScreen" means Colorado's interactive environmental justice mapping tool, which compiles 35 environmental, health, and demographic indicators to identify and visualize areas with higher environmental health risks, as of the effective date of the rule. The tool also shows places that meet the statutory definition of a disproportionately impacted community in § 24-4-109(2)(b)(II), C.R.S. (May 23, 2023).

II.Q. "Combined heat and power unit" (also known as a "cogeneration unit") means a unit that simultaneously produces both electric power and useful thermal output from the same primary energy source, and may include facilities where electricity is generated from waste steam or is generated by a stationary combustion turbine.

II.R. "Compliance year" means any year in which a GEMM 2 facility must comply with a GEMM 2 annual GHG emissions requirement.

II.S. "Credit account" means an account for a manufacturing stationary source that is created by the Division or its agent, to which the Division and/or the manufacturing stationary source transfers GHG credits to meet the manufacturing stationary source's compliance obligations.

II.T. "Direct GHG emissions" means GHG emissions from a manufacturing stationary source that are reported to the State of Colorado under Regulation Number 22, Part A and/or to the EPA under Part 98 and measured in terms of CO_2e.

II.U. "Disproportionately impacted community" means those communities that meet the definition contained in § 24-4-109(2)(b)(II), C.R.S. (May 23, 2023). For purposes of Regulation Number 27, disproportionately impacted community means any census block group identified in the disproportionately impacted community layer in the most recent version of Colorado EnviroScreen as of the date of the effective rule.

II.V. "Energy and GHG emission control audit" (the audit) means a rigorous examination of the GHG emissions and energy consumption of an EITE stationary source with the goal of analyzing and recommending GHG BAECT and energy BMPs, and identifying opportunities for reduction in GHG emissions and energy consumption for the facility, conducted consistent with the requirements set forth in this section.

II.W. "Energy best management practices" (energy BMPs) means the best energy efficiency practices available to the EITE stationary source, based on the maximum degree of energy efficiency that is achievable on a case-by-case basis, taking into account energy, environmental, and economic impacts, and is achievable for such facility through application of production process improvements and available equipment or process control methods, systems, and techniques, and includes incorporating all the key elements of strategic energy management (SEM), such that the facility continually improves its energy performance, reduces energy costs, and reduces GHG emissions associated with energy use.

II.X. "Energy efficiency" means using less electricity or fuel to produce the same quantity of product or service.

II.Y. "Energy-intensive, trade-exposed manufacturing stationary source" (EITE stationary source) means a source that principally engages in cement and concrete product manufacturing, NAICS code 3273; foundries, NAICS code 3315; iron and steel mills and ferroalloy manufacturing, NAICS code 3311; and/or pulp, paper, and paperboard mills, NAICS code 3221.

II.Z. "Federal ENERGY STAR ® Program" means the EPA's voluntary program for industrial manufacturers through which specific energy performance indicators are measured and compared across industries and to which facilities are certified if they are achieving an Energy Star scoring of 75 or greater.

II.AA. "GEMM 2 facility" means a stationary source located in Colorado that principally engages in manufacturing activities and directly emits equal to or greater than 25,000 metric tons per year of CO2e emissions, as reported pursuant to Regulation Number 22; including any existing EITE stationary source that emits equal to or greater than 25,000 metric tons per year of CO2e emissions and elects to be regulated under Part B. Manufacturing activities include the mechanical, physical, or chemical transformation of materials, substances, or components into new products. This is limited to facilities with NAICS codes beginning with 31-33.

II.BB. "GEMM 2 facility GHG baseline emissions" means, for stationary sources qualifying as GEMM 2 facilities as of January 1, 2023, the higher reported direct GHG emissions from either the 2021 or 2022 calendar year, measured in metric tons of CO2e as reported pursuant to Regulation Number 22, Part A., as revised to correct any previous inaccuracies or to account for capital investments between 2015 and 2021 that increased a GEMM 2 facility's production capacity by over thirty (30) percent, for which additional production, as of 2022, was not yet realized. If a GEMM 2 facility met the criteria for the production-based adjustment, the GEMM 2 facility's baseline was revised upwards to account for seventy-five (75) percent of the GHG emissions increase resulting from the production capacity expansion, provided, however, that if the GEMM 2 facility met the requirements of Part B, Section I.A.1, its GEMM 2 facility baseline was revised upwards to account for one-hundred (100) percent of the GHG emissions increase resulting from the production capacity expansion.

II.CC. "GEMM 2 annual GHG emissions requirement" means for each stationary source qualifying as a GEMM 2 facility as of January 1, 2023, the calculated CO2e emissions requirement that a GEMM 2 facility must comply with in a calendar year as determined pursuant to Part B, Section I.A.

II.DD. "GHG best available emission control technology" (GHG BAECT) means a GHG emission control technology for a GHG emission unit based on the maximum degree of GHG reductions achievable on a case-by-case basis, taking into account energy, environmental, and economic impacts, employment of which is demonstrated by compliance with the GHG BAECT and energy BMP intensity rate determination.

II.EE. "GHG BAECT and energy BMP intensity rate" means the total direct GHG emissions per unit of production from the emissions units within the audit scope after GHG BAECT and energy BMPs are operational as determined in Part C.

II.FF. "GHG credit" means a uniquely identifiable and tradable compliance instrument equal to one metric ton of CO2e reduced, which is generated, issued, transferable, and may be retired pursuant to Part D. The GHG credit must be real, additional, quantifiable, permanent, verifiable, and enforceable and provide additional emissions reductions beyond a facility's compliance obligation.

II.GG. "GHG credit trading system" means a GHG credit accounting, tracking, and trading system established by the Division and/or its agent where GHG credits are issued by the Division or its agents to manufacturing stationary sources in the system, and may be transferred between regulated sources, and retired under this Regulation Number 27.

II.HH. "GHG mitigation plan" means the plan produced by a GEMM 2 facility pursuant to Part A, Section III.B.1.

II.II. "GHG reduction plan" means the plan produced by a GEMM 2 facility under Part B, Section II.A., or the plan produced by a stationary source constructed on or before the effective date of this rule that becomes a GEMM 2 facility after the effective date of this rule under Part B, Section I.B, as applicable.

II.JJ. "Greenhouse gas" (GHG) means carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF6) and Nitrogen Trifluoride (NF3).

II.KK. "Harmful air pollutant" as used in this section means pollutants designated by EPA as criteria air pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate pollution (PM) (PM2.5 and PM10) and sulfur dioxide) or hazardous air pollutants. This term is not intended to articulate different thresholds or standards for those pollutants listed as harmful air pollutants than currently established under the federal Clean Air Act or the Colorado Air Pollution Prevention and Control Act and their respective implementing regulations.

II.LL. "Independent third party" means an engineering or consulting firm selected by the State of Colorado; which is not affiliated with the stationary source, its subsidiaries, or related entities and has no common ownership with the stationary source. The capabilities and knowledge of the firm must include, but are not limited to, background, experience, and recognized abilities to perform the assessment activities, data analysis, and report preparation and experience working with the industry subject to this section.

II.MM. "International Organization of Standardization" (ISO) means the independent, non-governmental international standard-setting body composed of representatives from various national standards organizations.

II.NN. "ISO 50001: Energy Management Systems – Requirements with guidance for use" (ISO 50001) means the internationally accepted standard which specifies the requirements for an organization to demonstrate that it has a sustainable energy management system in place, has completed the energy planning process, and has a commitment to continual improvement of its energy performance.

II.OO. "Lead auditor" means an individual who has met the requirements of and is certified as a lead auditor through a professional certification body.

II.PP. "Management system" means the policies, processes, and procedures used by an organization to ensure that it can fulfill the tasks required to achieve its GHG emissions or energy management objectives.

II.QQ. "Manufacturing stationary source" means an EITE stationary source or a GEMM 2 facility.

II.RR. "Net meter" means a renewable energy resource or renewable energy storage on the EITE stationary source's property which supply energy directly to the EITE stationary source's energy provider in exchange for a Power Purchase Agreement where the customer receives credit for the energy production.

II.SS. "Non-GHG BAECT emissions" means the GHG mass emissions from an EITE stationary source that are not covered by the audit.

II.TT. "North American industry classification system (NAICS) code(s)" means the six-digit code(s) that represents the product(s)/activity(s)/service(s) at a facility or supplier as listed in the Federal Register and defined in "North American Industrial Classification System Manual 2007," available from the U.S. Department of Commerce, National Technical Information Service, Alexandria, VA 22312 (as published March 13, 2023).

II.UU. "Permanent" means the GHG emission reductions are not reversible, or, when the GHG emission reductions are reversible, that mechanisms are in place to replace any reversed emission reductions to ensure that all reductions that are awarded GHG credits endure.

II.VV. "Plain-language" means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and is easily understandable.

II.WW. "Primary account representative" means an individual authorized by a manufacturing stationary source to make submissions to the Division or its agent in all matters pertaining to this Regulation Number 27 that legally bind the authorizing source.

II.XX. "Process" means a specific operation at an EITE stationary source comprising a series of actions or steps which are carried out in a specific order to complete a particular stage in the manufacturing process.

II.YY. "Product" means the quantifiable material output of an individual manufacturing process or manufacturing facility.

II.ZZ. "Proof of certification" means an official document issued by the formal registrar or certifying body stating the scope of certification, the expiration date and the standards to which the stationary source is certified.

II.AAA. "Qualified third-party auditor" means one or more individuals who hold a valid lead auditor certification in greenhouse gas and/or energy management systems and have demonstrated capabilities to evaluate GHG reduction opportunities for large, energy-intensive, industrial manufacturing processes and facilities. Qualified third-party auditors must have worked as an auditor for at least two years, or must have worked as a project manager or lead person for not less than four years (two of which may be graduate level work) in: (1) the development of GHG or other air emission inventories, or (2) as a lead environmental data or financial auditor. The auditor must not be affiliated with the EITE stationary source, its subsidiaries, or related entities; there can be no common ownership between the EITE stationary source and the third-party auditor. The capabilities and knowledge of the auditor must include, but are not limited to, background, experience, and recognized abilities to perform the assessment activities, data analysis, and report preparation and experience lead auditing GHG or energy management systems for the industry subject to this section.

II.BBB. "RACT/BACT/LAER Clearinghouse" (RBLC) means EPA's central database of air pollution technology information, including past RACT, BACT, and LAER decisions contained in New Source Review (NSR) permits, to promote the sharing of information among permitting agencies and to aid in future case-by-case determinations.

II.CCC. "Real" means that GHG emission reductions result from a demonstrable action or set of actions and are quantified using appropriate, accurate, and conservative methodologies.

II.DDD. "Regulated source" means a source of greenhouse gas that is subject to a rule adopted by the Commission under Section 25-7-105(1)(e), C.R.S., that imposes specific and quantifiable GHG reduction obligations upon that source or group of sources.

II.EEE. "Residential building unit" means a building or structure designed for use as a place of residency by a person, a family, or families. The term includes manufactured, mobile, and modular homes, except to the extent that any such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes. Each individual residence within a building will be counted as one Residential building unit.

II.FFF. "Residential community" means an area where more than ten (10) residential building units are grouped together within a one (1) mile radius.

II.GGG. "Retail distributed generation" means a renewable energy resource or renewable energy storage that directly supplies building or process energy needs at a metered location, where surplus energy is supplied to the location's energy provider when energy production is greater than on-site demand and grid energy is supplied through a customer meter to the location during times when on-site production is less than demand.

II.HHH. "Social cost of GHGs" means the monetized damages associated with an incremental increase in GHG emissions in a given year. The social cost of GHGs must include separate calculations for carbon, methane, and nitrous oxide, and the social cost of any other GHGs must be calculated using carbon dioxide equivalent. For purposes of Regulation Number 27, the social cost of GHGs is established, using a two and one-half percent discount rate, by the Federal Interagency Working Group's Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide, Interim Estimates under Executive Order 13990, dated February 2021.

II.III. "Strategic energy management" (SEM) means a management system-based, continuous improvement approach to energy management that seeks to improve an organization's energy performance, reduce energy costs, and reduce GHG emissions associated with energy use; drives improvement in facility energy efficiency through equipment upgrades operations and maintenance improvements and behavioral changes.

II.JJJ. "Technically feasible" means that the GHG reduction measure can be implemented at the facility within existing technological and scientific limitations.

II.KKK. "Transfer" means, as to a GHG credit, the removal of a GHG credit from one manufacturing stationary source's account in the GHG credit trading system and placement of that credit into another manufacturing stationary source's account in the system if agreed to by both the transferor and transferee manufacturing stationary sources.

II.LLL. "Verifiable" means that a reported emission reduction resulting from a GHG credit at a regulated source is well documented and transparent such that it lends itself to an objective review by the Division to verify the emission reduction is real, using monitoring of emissions reductions relative to the GEMM 2 annual GHG emissions requirement or annual emissions limitation, as applicable, for the relevant compliance year.

III. Noncompliance

III.A. In the event that an EITE stationary source fails to meet its annual emissions limitation, the EITE stationary source will be deemed in noncompliance and must surrender or obtain and surrender three (3) GHG credits for every metric ton of CO2e emitted by the EITE stationary source in excess of the annual emissions limitation and may be subject to a civil penalty or other enforcement action by the Division.

III.B. In the event that a GEMM 2 facility fails to comply with: (i) its aggregated GHG emissions requirement for the first compliance period (calculated by aggregating a facility's GEMM 2 annual GHG emission requirements for 2024, 2025, and 2026); (ii) its aggregated GHG emissions requirement for the second compliance period (calculated by aggregating a facility's GEMM 2 annual GHG emission requirements for 2027, 2028, and 2029); or (iii) after 2029, its GEMM 2 annual GHG emissions requirement in any compliance year, the facility's GEMM 2 annual GHG emissions requirement will be adjusted downwards by at least two (2) times the amount, in metric tons of CO2e, by which the facility exceeded its aggregated GHG emissions requirements in either compliance period or, after 2029, its GEMM 2 annual GHG emissions requirement. The timeline required for the GEMM 2 facility to achieve the mitigation will be determined by the Division but must be no later than three (3) years after the period or year of non-compliance.

III.B.1. If a GEMM 2 facility fails to comply with its aggregated GHG emissions requirements in either compliance period or, after 2029, its GEMM 2 annual GHG emissions requirement in any compliance year, the facility must submit a GHG mitigation plan for Division review and approval by no later than December 31 of the year following the period or year of non-compliance, documenting how it will comply with the additional required GHG reductions. The GHG mitigation plan must include:

III.B.1.a. The amount by which the GEMM 2 facility exceeded the facility's aggregated GHG emissions requirement in metric tons of CO2e for the previous period or GEMM 2 annual GHG emissions requirement in metric tons of CO2e for the previous year.

III.B.1.b. The adjusted GHG emissions requirement for the mitigation period, as determined by the Division pursuant to Section III.B.

III.B.1.c. The onsite GHG reduction measure(s) being implemented to achieve the additional reduction required pursuant to Section III.B, for the mitigation period.

III.C. If the GEMM 2 facility does not achieve the applicable GEMM 2 annual GHG emissions requirement or mitigation reduction amount, the facility must take the necessary corrective actions to achieve the required reductions pursuant to this Section III, in addition to paying any civil penalties that may be assessed. The GEMM 2 facility may be deemed out of compliance for the entirety of the year and subject to daily civil penalties.

III.D. In the event that a GEMM 2 facility fails to implement the emission reduction measures as documented in the Division-approved GHG reduction plan pursuant to Part B, Section II, the GEMM 2 facility may be deemed out of compliance and may be subject to enforcement action and daily civil penalties.

III.E. If a GEMM 2 facility does not submit timely, complete, and accurate documentation to the Division pursuant to any section of Regulation Number 27, the facility may be subject to enforcement action including assessment of daily civil penalties.

III.F. Nothing in this Section III limits the enforcement powers of the Division under the Act to remedy noncompliance with Regulation Number 27, including but not limited to the Division's ability to seek additional penalties, and compel actual reductions at any manufacturing source in noncompliance.

PART B GEMM 2 Facility Requirements

I. Greenhouse Gas Emissions Reduction Requirements for GEMM 2 Facilities

I.A. Stationary sources qualifying as GEMM 2 facilities as of January 1, 2023 must comply with the GEMM 2 annual GHG emissions requirements set forth in Part B, Section I.A., as applicable. An EITE stationary source that emitted equal to or greater than 25,000 mt of CO2e emissions as of January 1, 2023, but was not subject to Part C of this Regulation Number 27 as of January 1, 2023, is subject to the GEMM 2 annual GHG emissions requirements set forth in Part B, Section I.A., as applicable, unless the source notifies the Division within 6 months of the effective date that it will comply with Part C. Compliance will be demonstrated pursuant to Part B, Section IV.

I.A.1. The owner or operator of a GEMM 2 facility for which the higher of the GEMM 2 facility's 2021 or 2022 emissions, as reported pursuant to Regulation Number 22, Part A, reflect a reduction in direct GHG emissions of at least twenty (20) percent, as compared to the facility's 2015 GHG emissions, must comply with the following requirements:

I.A.1.a. The owner or operator of the GEMM 2 facility must comply with the GEMM 2 annual GHG emissions requirements in Table 1.

Table 1

Year	GEMM 2 Annual GHG Emissions Requirement
2024 – 2029	GEMM 2 facility GHG baseline emissions
2030 and beyond	1% less than the GEMM 2 facility GHG baseline emissions

I.A.1.b. The owner or operator of a GEMM 2 facility subject to Section I.A.1.a., above, may, in the alternative to complying with Section I.A.1.a., comply with the following requirements.

I.A.1.b.(i) For calendar years 2024 and 2025, comply with a GEMM 2 annual GHG emissions requirement equal to seventy-five (75) percent of the facility's 2015 reported emissions;

I.A.1.b.(ii) Beginning in 2026, comply with a GEMM 2 annual GHG emissions requirement equal to the facility's GEMM 2 facility GHG baseline emissions; and

I.A.1.b.(iii) Beginning in 2030 and continuing in perpetuity, comply with a GEMM 2 annual GHG emissions requirement for 2030, as established under Section I.A.1.a, above, subject to any additional reductions required under Section I.A.5.; provided, however, that

I.A.1.b.(iv) If the GEMM 2 facility subject to this Section I.A.1.b. cannot meet a GEMM 2 annual GHG emissions requirement equal to its GEMM 2 facility GHG baseline emissions by 2026 consistent with Section I.A.1.b.(ii), it must either:

I.A.1.b.(iv)(A) Beginning in 2028 and continuing in perpetuity, comply with its GEMM 2 annual GHG emissions requirement for 2030, as established under Section I.A.1.b.(iii), subject to an additional one (1) percent reduction; or

I.A.1.b.(iv)(B) Beginning in 2030 and continuing in perpetuity, comply with its GEMM 2 annual GHG emissions requirement for 2030, as established under Section I.A.1.b.(iii), subject to an additional two (2) percent reduction.

I.A.2. The owner or operator of a GEMM 2 facility for which the higher of the GEMM 2 facility's 2021 or 2022 emissions, as reported pursuant to Regulation Number 22, Part A reflect a reduction in direct GHG emissions of at least ten (10) percent but less than twenty (20) percent, as compared to the facility's 2015 GHG emissions, must comply with the GEMM 2 annual GHG emissions requirements in Table 2.

Table 2

Year	GEMM 2 Annual GHG Emissions Requirement
2024 – 2029	1.25% less than the GEMM 2 facility GHG baseline emissions
2030 and beyond	7% less than the GEMM 2 facility GHG baseline emissions

I.A.3. The owner or operator of a GEMM 2 facility for which the higher of the GEMM 2 facility's 2021 or 2022 emissions, as reported pursuant to Regulation Number 22, Part A reflect a reduction in direct CO2e emissions greater than zero (0) percent but less than ten (10) percent, as compared to its 2015 GHG emissions, must comply with the GEMM 2 annual GHG emissions requirements in Table 3.

Table 3

Year	GEMM 2 Annual GHG Emissions Requirement
2024 – 2029	1.50% less than the GEMM 2 facility GHG baseline emissions
2030 and beyond	8% less than the GEMM 2 facility GHG baseline emissions

I.A.4. The owner or operator of a GEMM 2 facility for which the higher of the GEMM 2 facility's 2021 or 2022 emissions, as reported pursuant to Regulation Number 22, Part A are equal to or greater than its 2015 GHG emissions, must comply with the GEMM 2 annual GHG emissions requirements in Table 4.

Table 4

Year	GEMM 2 Annual GHG Emissions Requirement
2024 – 2029	1.75% less than the GEMM 2 facility GHG baseline emissions
2030 and beyond	12.5% less than the GEMM 2 facility GHG baseline emissions

I.A.5. Beginning in 2030, and for each year thereafter, in addition to those limits in Part B, Sections I.A.1. through I.A.4., GEMM 2 facilities will also be required to incorporate the reductions in Table 5 into the GEMM 2 annual GHG emissions requirement in 2030 and beyond, based on the GEMM 2 facility's percent contribution towards the cumulative GEMM 2 facilities' higher of 2021 or 2022 emissions, as reported pursuant to Regulation Number 22, Part A.

Table 5

GEMM 2 Facility Percent Contribution	GEMM 2 Annual GHG Emissions Requirement in 2030 and beyond
30% or greater	6% less than the GEMM 2 facility GHG baseline emissions
At least 20% but less than 30%	5% less than the GEMM 2 facility GHG baseline emissions
At least 10% but less than 20%	4% less than the GEMM 2 facility GHG baseline emissions
At least 5% but less than 10%	3% less than the GEMM 2 facility GHG baseline emissions

I.A.6. If the owner or operator of a GEMM 2 facility certifies through a Division-approved form that it will voluntarily comply with the facility's GEMM 2 annual GHG emissions requirement for 2030 beginning no later than 2025 and each year thereafter through limiting onsite direct GHG emissions, the facility is not subject to the requirements in Part B, Section II. Upon submission of this form, the facility's GEMM 2 annual GHG emissions requirement for 2030 is established as the facility's new, enforceable GEMM 2 annual GHG emissions requirement for calendar year 2025 and each year thereafter. To qualify, the owner or operator of the GEMM 2 facility must provide the Division-approved form, certified by a responsible party, to the Division no later than May 31, 2025.

I.B. Except as otherwise provided in this Section I.B, any stationary source constructed on or before the effective date of this rule that becomes a GEMM 2 facility after the effective date of this rule must comply with the following requirements. An EITE stationary source that emitted equal to or greater than 25,000 mt of CO2e emissions as of January 1, 2023, but was not subject to Part C of this Regulation Number 27 as of January 1, 2023, may not elect to comply with this Regulation Number 27 through the requirements of Part B, Section I.B.

I.B.1. By December 31st of the year in which the facility first reports direct GHG emissions equal to or greater than 25,000 metric tons of CO2e, the owner or operator of the facility must conduct a GHG emission control audit to assess the implementation of GHG best available emission control technology (GHG BAECT), propose a five (5) year GHG reduction plan for the facility and submit the audit report and GHG reduction plan to the Division. An EITE stationary source's GHG reduction plan for purposes of this Section I.B. must propose to achieve greater than a five (5) percent reduction in direct GHG emissions from the EITE stationary source's current direct GHG emissions, compared to the most recent year of operation. The GHG BAECT analysis must be performed according to the requirements set out in Part C, Sections I.C.1.a.

I.B.2. Audits must be conducted by a qualified third-party auditor and meet or exceed nationally or internationally accepted energy and GHG accounting and management audit standards or protocols.

I.B.3. The Division will post the facility's audit report and GHG reduction plan proposal to the Division's website within fifteen (15) days of receipt and provide a 30-day public comment period.

I.B.4. The Division will review the audit report, GHG reduction plan and public comments received and issue a final five (5) year GHG reduction plan for the facility within one hundred twenty (120) days of receipt of the report and plan. The Division will post the facility's approved GHG reduction plan on the Division's website.

II. Greenhouse Gas Reduction Plans

II.A. No later than September 30, 2025, except as otherwise provided in this Regulation Number 27, the owner or operator of a GEMM 2 facility subject to Section I.A. must develop a GHG reduction plan and submit the certified GHG reduction plan on a Division-approved form, along with the independent third-party evaluation and findings of the plan, to the Division. The owner or operator of a glass container manufacturing facility must submit the certified GHG reduction plan, as described in this Section II. as expeditiously as practicable but no later than June 1, 2027. The GHG reduction plan must include the following information:

II.A.1. Basic emissions information

II.A.1.a. The GEMM 2 facility's GHG baseline emissions.

II.A.1.b. The difference in GHG emissions in metric tons of CO2e reported for the year 2024, compared to its GEMM 2 facility GHG baseline emissions.

II.A.1.c. The percent of GHG emission reduction required for the GEMM 2 facility to comply with its 2030 GHG emissions requirement pursuant to Section I.A. based on the GEMM 2 facility's GHG baseline emissions, as applicable.

I.A.1.d. The difference in metric tons of CO2e between the GEMM 2 facility's GEMM 2 annual GHG emissions requirement for 2030 and its GEMM 2 annual GHG emissions requirement for 2024, as applicable. This should be calculated as:

GEMM 2 annual GHG Emissions Requirement for 2030 - GEMM 2 annual GHG emissions requirement for 2024

II.A.2. GHG reduction measures, including portfolio approach

II.A.2.a. The list of all GHG reduction measures that result in greater than de minimis GHG reductions and that are technically feasible and commercially available or other measures that facilities propose for implementation at the GEMM 2 facility. The following information is required for each measure listed.

II.A.2.a.(i) The quantity of metric tons of CO2e reduced per year from each measure;

II.A.2.a.(ii) The net reduction in associated harmful air pollution in metric tons per year from each measure;

II.A.2.a.(iii) The cost in USD per metric ton of CO2e reduced for each reduction measure for all measures;

II.A.2.a.(iv) The timeframe for implementation for each measure; and

II.A.2.a.(v) If a facility seeks to utilize Section II.A.3.b., below, then information as to those GHG reduction measures that are alternate options or redundant or incompatible with each other.

II.A.3. The portfolio of measures up to the 2030 social cost of GHGs that the facility is required to propose to implement by 2030 towards achievement of the facility's 2030 GHG emissions requirement as well as any measure(s) above the 2030 social cost of GHGs, including the cost information and estimated reduction of harmful air pollution of those measure(s), that the facility is voluntarily proposing to implement by 2030 to ensure it achieves its 2030 GEMM 2 GHG emissions requirement.

II.A.3.a. If the facility proposes to implement a portfolio measures from its GHG reduction plan that is estimated to yield total GHG reductions within five (5) percent of another portfolio of measures, the facility must propose to implement the portfolio of measures that provides the greater reduction in harmful air pollution, provided that the cost of the portfolio of measures is at or below the 2030 social cost of GHGs.

II.A.3.b. A facility is not required to select and implement measures that are alternate options or redundant or incompatible with each other.

II.A.4. If, as of the GEMM 2 facility's submittal deadline for its GHG reduction plan in this Section II.A., a facility is already in the process of constructing or implementing, including post-construction project implementation or ramp up, a GHG reduction measure or portfolio of measures that are projected to achieve the entirety of the facility's 2030 GEMM 2 annual GHG emissions requirement, the facility's list of GHG reduction measures in Section II.A.2. need only include such measure(s), and the facility must only propose to implement such measure(s) to comply with Section II.A.3. A facility that qualifies for this section is not subject to Section II.A.3.a.

II.A.5. If the GEMM 2 facility proposes to implement all technically feasible portfolio of measures at or below the 2030 social cost of GHGs, but the proposed measures do not satisfy the 2030 GEMM 2 GHG emissions requirement, the GHG reduction plan may indicate that the facility plans to use the GHG credit trading system for compliance, provided that the GEMM 2 facility complies with Section II.A.6. if it is located within one (1) mile of a disproportionately impacted community and within fifteen (15) miles of a residential community.

II.A.6. If (1) a GEMM 2 facility plans to use the GHG credit trading system for compliance and (2) any portion of the GEMM 2 facility's property line is within one (1) mile of a disproportionately impacted community and within fifteen (15) miles of a residential community as of the effective date of this rule, the following requirements apply:

II.A.6.a. The GHG reduction plan must identify additional GHG reduction measures not yet selected for implementation under Part B, Sections II.A.3. that cost up to fifty (50) percent above the 2030 social cost of GHGs. If any such measures exist, the GHG reduction plan must quantify the largest amount of harmful air pollution reduction achievable by implementing one or a combination of such measures, in each case up to the facility's GEMM 2 annual GHG emissions requirement for 2030.

II.A.6.b. The GHG reduction plan must propose to implement measure(s) to reduce harmful air pollution in an amount equal to the amount achievable identified in Section II.A.6.a.

II.B. The owner or operator of the GEMM 2 facility must ensure one of its responsible agents certifies that the contents of the GHG reduction plan documentation is complete and accurate.

II.C. The owner or operator of the GEMM 2 facility must ensure an independent third party conducts a technical and regulatory review of its GHG reduction plan. The selected firm will review the GHG reduction plan to determine the accuracy and completeness of the plan including, without limitation, cost projections, assumptions and data sources, GHG emission and harmful air pollution impacts, and compliance with this Part B, Section II.

II.D. The GEMM 2 facility must cooperate with the independent third party to assure accuracy and completeness of the GHG reduction plan, and compliance with this Part B, Section II. Upon completion of the review, the plan must be certified by the independent third party as adhering to the requirements of this Part B, Section II, prior to submission of the plan to the Division.

II.E. The GHG reduction plan must include a plain-language summary of the proposed GHG reduction plan for the GEMM 2 facility.

II.E.1. Each plain language summary shall be provided in the top two languages spoken by the community surrounding the GEMM 2 facility. The translations must be prepared by a certified translator.

II.E.2. The plain language summary shall include the list of measures analyzed in the plan for the GEMM 2 facility, the correlating GHG emission and harmful air pollutant impacts of the measures, and justification for why the proposed measures were identified.

II.F. Within fifteen (15) days of receipt, the Division will post the certified GHG reduction plan and the independent third party review of the GHG reduction plan on the Division's website.

II.G. The Division will hold a thirty (30) day public comment period for GHG reduction plans.

II.H. Except for GHG reduction plans submitted by glass container manufacturing facilities after September 30, 2025 but no later than June 1, 2027 under Part B, Section II.A, the Division must issue an approval or request for modification of the proposed GHG reduction plan to the GEMM 2 facility by December 31, 2025. For GHG reduction plans submitted by glass container manufacturing facilities after September 30, 2025 but no later than June 1, 2027, the Division must issue an approval or request for modification of the proposed GHG reduction plan to the GEMM 2 facility within three months of submission.

II.I. The Division will hold at least three (3) public meetings to review the approved GEMM 2 facility GHG reduction plans.

II.J. GHG reduction measures must be timely and completely implemented in accordance with the GEMM 2 facility's documented and approved GHG reduction plan. A GEMM 2 facility may request to modify the GHG reduction plan for the facility at any time. The modification must comply with the same requirements for the GHG reduction plan in Part B, Section II.

III. GEMM 2 Facility Greenhouse Gas Emission Requirement Compliance

III.A. A GEMM 2 facility must first attempt to meet its GEMM 2 annual GHG reduction requirement through technically feasible, onsite measures at or below the 2030 social cost of GHGs.

III.A.1. GHG reductions from onsite carbon capture and storage are considered onsite measures for purposes of Section III.A; provided, however, that onsite carbon capture and storage reductions may only be counted towards compliance with this Regulation Number 27 if the Division has established or adopted by reference a standardized carbon capture and storage protocol or protocols.

III.B. If a facility cannot meet its GEMM 2 annual GHG reduction requirement through technically feasible, onsite measures at or below the 2030 social cost of GHGs, the facility may retire GHG credits through the GHG credit trading system, pursuant to Part D, to achieve the remainder of its GEMM 2 annual GHG emission requirement, provided the facility complies with requirements set forth in Part B, Section II.A.6., as applicable.

III.C. Permitting requirements for GHG emission reduction measures.

III.C.1. A manufacturing stationary source that requires a construction permit(s) or modification(s) of an existing permit(s) in accordance with Regulation Number 3 to comply with the requirements of Parts B or C of Regulation Number 27 must submit a complete permit application to the Division at least twelve (12) months prior to the start of construction or at least twelve (12) months prior to the start of the modification.

III.C.2. If the owner or operator of a GEMM 2 facility has complied with Part B, Section III.C.1. and the Division has not issued the permit required to comply with Part B within twelve (12) months of receipt of the permit application, the Division will adjust the facility's GEMM 2 annual GHG emissions requirement, as applicable, upon submission of documentation by the GEMM 2 facility that shows good cause.

IV. Reporting and Annual Compliance Certification Requirements

IV.A. Beginning March 31, 2025 and every March 31 thereafter, owners or operators of GEMM 2 facilities must submit an initial report to the Division that provides the GEMM 2 facility's reported direct GHG emissions for the previous year and the difference between such reported emissions and the GEMM 2 facility's emissions requirement for the previous year, as determined pursuant to Part B, Section I.A. Such report must include the following:

IV.A.1. For a GEMM 2 facility utilizing a combined heat and power unit, when calculating the GEMM 2 facility's annual GHG emissions in metric tons of CO2 pursuant to Section IV.A.1.a., the facility may account for the GHG emissions reduction associated with the combined heat and power unit's displaced direct thermal emissions, using a six-step formula submitted pursuant to a Division approved form. GHG emissions reductions resulting from the utilization of a facility's combined heat and power unit(s) may only account for up to 50% of the facility's GEMM 2 annual GHG emissions reduction requirement pursuant to Section I.A.1. through Section I.A.5. of this Part.

IV.A.2. The GEMM 2 annual GHG emissions requirement for the previous year, as determined pursuant to Part B, Section I.A.

IV.A.3. The difference, if any, between the GEMM 2 facility's reported direct GHG emissions for the previous year and the GEMM 2 facility's GEMM 2 annual GHG emissions requirement for the previous year.

IV.B. On September 30, 2027, owners or operators of GEMM 2 facilities must submit a report to the Division that demonstrates compliance on a three-year cycle and includes:

IV.B.1. A compliance certification in which the account representative of each GEMM 2 facility certifies:

IV.B.1.a. The GEMM 2 facility's GHG emissions, in metric tons of CO2e, for the calendar years 2024, 2025, and 2026.

IV.B.1.b. The GEMM 2 facility's GHG emissions requirement for the calendar years 2024, 2025, and 2026, as determined pursuant to Part B, Section I.A.

IV.B.1.c. The difference, if any between the GEMM 2 facility's total reported direct GHG emissions for calendar years 2024, 2025, and 2026 and the GEMM 2 facility's total GEMM 2 annual GHG emissions requirements for 2024, 2025, and 2026 combined.

IV.B.1.d. Documentation of GHG credits retired prior to expiration in the GHG credit trading system for compliance purposes in the applicable period.

IV.B.2. A report detailing progress of and compliance with the approved GHG reduction plan for the GEMM 2 facility including relevant project management documentation, project status, and timeline

IV.C. On September 30, 2030, owners or operators of GEMM 2 facilities must submit a report to the Division that demonstrates compliance on a three-year cycle that includes:

IV.C.1. A compliance certification in which the account representative of each GEMM 2 facility certifies:

IV.C.1.a. The GEMM 2 facility's GHG emissions, in metric tons of CO2e, for the calendar years 2027, 2028, and 2029.

IV.C.1.b. The GEMM 2 facility's GHG emissions requirement for the calendar years 2027, 2028, and 2029, as determined pursuant to Part B, Section I.A.

IV.C.1.c. The difference, if any between the GEMM 2 facility's total reported direct GHG emissions for calendar years 2027, 2028, and 2029 and the GEMM 2 facility's total GEMM 2 annual GHG emissions requirements for 2027, 2028, and 2029 combined.

IV.C.1.d. Documentation of GHG credits retired prior to expiration in the GHG credit trading system for compliance purposes in the applicable period.

IV.C.2. A report detailing progress of and compliance with the approved GHG reduction plan for the GEMM 2 facility including relevant project management documentation, project status, and timeline.

IV.D. Beginning September 30, 2031 and every September 30 thereafter, owners or operators of GEMM 2 facilities must submit an annual report to the Division that includes:

IV.D.1. A compliance certification in which the account representative of each GEMM 2 facility certifies:

IV.D.1.a. The GEMM 2 facility's annual GHG emissions, in metric tons of CO2e, for the previous calendar year.

IV.D.1.b. The GEMM 2 annual GHG emissions requirement for the previous year, as determined pursuant to Part B, Section I.A.

IV.D.1.c. The difference, if any, between the GEMM 2 facility's reported direct GHG emissions for the previous year and the GEMM 2 facility's GEMM 2 annual GHG emissions requirement for the previous year.

IV.D.1.d. Documentation of GHG credits retired prior to expiration in the GHG credit trading system for compliance purposes in the applicable year.

IV.D.2. A report detailing progress of and compliance with the approved GHG reduction plan for the GEMM 2 facility including relevant project management documentation, project status, and timeline.

IV.E. If (1) Regulation Number 22, Part A is updated such that additional emission sources are identified that are required to be reported from a GEMM 2 facility, which emission sources existed prior to the change in required reporting under Regulation Number 22, Part A, (2) methodologies for emissions calculations change; or (3) there is discovery of a reporting error, then the Division will consult with the GEMM 2 facility to adjust the GEMM 2 facility's previous years' reported GHG emissions totals to accommodate such changes or to otherwise ensure a consistent approach to a facility's emissions calculations, back to the year 2015, as applicable.

V. Recordkeeping

V.A. GEMM 2 facilities must maintain records for a period of ten (10) years and make records available to the Division upon request.

V.A.1. Reports required under Part B, Section IV.

V.A.2. Division-approved GHG reduction plans submitted pursuant to Part B, Section I.B. or Section II.A. as applicable, and records reasonably necessary to demonstrate compliance with the approved GHG reduction plan.

V.A.3. Any other documents submitted to the Division under this Regulation Number 27.

V.B. Within fifteen (15) days of receipt, the Division will post to its website the following documents that may be submitted by a GEMM 2 facility under this Regulation Number 27: certifications submitted under Part B, Section I.A.6; reports submitted under Part B, Section IV.A; records demonstrating compliance with GHG reduction plans submitted under Part B, Section V.A.2; and registration applications submitted under Part D, Section II.A.1.

V.C. Confidential business information contained in records submitted to the Division by GEMM 2 facilities under this Regulation Number 27 must be clearly identified and be submitted in a separate, supplementary document to the records.

PART C Energy-Intensive Trade-Exposed Stationary Source Requirements

I. Audit Requirements

I.A. Energy and GHG Emission Control Audits

I.A.1. By December 31, 2022, and December 31 every five years thereafter, owners or operators of each EITE stationary source must conduct energy and GHG emission control audits to establish greenhouse gas best available emission control technology (GHG BAECT) and energy best management practices (energy BMPs) and determine whether the stationary source is employing GHG BAECT and energy BMPs at the EITE stationary source, and submit the audit report to the Division.

I.A.2. Each EITE stationary source must conduct an audit within twelve (12) months of reporting direct GHG emissions equal to or greater than 25,000 metrics tons CO2e per year under Regulation Number 22, Part A and/or 40 CFR Part 98 and every five years thereafter.

I.A.3. Audits must be conducted by a qualified third-party auditor and meet or exceed nationally or internationally accepted energy and GHG accounting and management audit standards or protocols.

I.B. Audit Plan

I.B.1. Each EITE stationary source must submit an audit plan to the Division for approval at least 120 days prior to beginning the audit as required in Section I.A. The Division will review the audit plan and notify the EITE stationary source within 60 days of submission of any deficiencies. If notified of deficiencies, the EITE stationary source must submit a revised audit plan for final approval no later than 30 days prior to beginning the audit. The EITE stationary source must receive approval from the Division of the audit plan prior to beginning the audit. Such approval shall not be unreasonably withheld. The audit plan must include:

I.B.1.a. A description of all the emission units at the EITE stationary source that directly release one or more GHGs, ordered from largest emitting to smallest emitting emission units averaged over the past 5 years, quantified in CO2e as well as broken out by GHG type. Using this list, the emission units that comprise at least the top 80% of the EITE stationary source's direct GHG emissions shall be identified, documented and included in the GHG emissions audit scope. Additionally, any individual emissions unit that comprises 2% or more of the EITE stationary source's direct GHG emissions shall be identified, documented and included in the GHG emissions audit scope.

I.B.1.b. Unless the EITE stationary source is utilizing Section I.B.1.c. to show employment of energy BMPs, a description of all the emission units at the EITE stationary source that consume energy, averaged over the past five (5) years and ordered from largest consuming to smallest consuming. Using this list, the energy consumption sources that comprise the top 80% of the EITE stationary source's energy consumption shall be identified, documented and included in the energy audit scope.

I.B.1.c. If an EITE stationary source is certified to the Federal Energy Star Program or ISO 50001, the EITE stationary source will be determined to be employing energy BMPs and the energy audit will be limited in scope. Proof of certification of the EITE stationary source to one or more of these existing standards must be included in the audit plan to utilize this option.

I.B.1.c.(i) If an EITE stationary source is planning on becoming certified to one of these standards, the EITE stationary source must submit the certification or registration timeline or plan, including key milestones towards certification or registration with certification scheduled for no more than 12 months after the audit date.

I.B.1.d. Records of any previous third-party audit results that the EITE stationary source proposes to use to support the audit on a supplementary basis or to avoid duplication of data collection efforts that have been performed within three (3) years prior to the planned audit date. To be accepted, supplementary audit data must be verified and validated by a third party and result from an audit that meets or exceeds nationally or internationally accepted energy and GHG accounting audit standards or protocols.

I.B.1.e. A description of the audit team members, including experience, qualifications, and role in the audit, and existing or previous business relationship, and the nature of such relationship with the owner or operator of the EITE stationary source. If there is an existing or previous business relationship, a list and description of work done for the owner or operator of the EITE stationary source.

I.B.1.e.(i) The Division may reject a proposed qualified third-party auditor or audit team if it does not meet the qualifications in Sections II.H. and II.KK., failed to conduct a previous audit to the satisfaction of the Division, or is deemed to have a previous or existing relationship with the source that is so pervasive that the auditor would be unable to conduct the audit in an unbiased and independent manner.

I.B.1.f. The specific GHG and/or energy audit standards, protocols or procedures to be used for conducting the audit, if applicable.

I.C. Audit Reports

I.C.1. Each EITE stationary source must complete the audit report in accordance with Sections I.C.1.a. through III.C.1.e. and submit the audit report to the Division by December 31 of the audit year that includes the following elements for all GHG emission units listed in accordance with Section I.B. and specified in the Division-approved audit plan, at a minimum.

I.C.1.a. The GHG BAECT analysis. The audit team must analyze GHG BAECT as follows:

I.C.1.a.(i) Identify all available control technologies and strategies with practical potential for application to reduce GHG emissions from the GHG emission units included in the audit scope. Identify the current GHG emissions rate of each audited emission unit at the time of the audit.

I.C.1.a.(i)(A) Control technologies and strategies must include, but are not limited to, fuel use, raw material use, energy efficiency improvements, preheating/heat reuse and strategic energy management options), and carbon capture and underground storage or utilization.

I.C.1.a.(ii) Eliminate technically infeasible control technologies and strategies.

I.C.1.a.(ii)(A) Notwithstanding Section I.C.1.a.(ii), the audit team must perform a feasibility assessment of carbon capture and underground storage or utilization technology for any single emissions unit evaluated with direct emissions of 100,000 tons per year or greater CO2e in any of the previous five years as reported under Regulation Number 22, Part A and/or 40 CFR Part 98. The audit team shall include this analysis in the audit report.

I.C.1.a.(iii) Rank remaining emission unit control technologies and strategies in descending order based on the reduction in direct GHG emissions per ton of product or output.

I.C.1.a.(iv) Perform a cost-effectiveness analysis on all control technologies and strategies for the emissions unit considering the full lifetime of the equipment. The cost-effectiveness analysis must include an estimate of the net levelized cost per ton of GHG emission reductions ($/ton CO2e) over the life of each proposed control method. The audit team must document in the audit report the discount rate, which is of no more than 8%, used for the cost-effectiveness analysis. The net levelized cost analysis should include, but is not necessarily limited to, the following costs and benefits:

I.C.1.a.(iv)(A) Engineering and design costs;

I.C.1.a.(iv)(B) Equipment costs, including installation;

I.C.1.a.(iv)(C) Available tax credits and/or incentive programs; and

I.C.1.a.(iv)(D) Changes in the annual costs resulting from the control technology/method including energy costs, operations and maintenance costs, and changes to productivity and/or product quality.

I.C.1.a.(v) Eliminate cost-prohibitive GHG reduction measures considered. GHG reduction measures with a cost-effectiveness of equal to or less than the social cost of GHGs cannot be eliminated as cost-prohibitive, except for a demonstrated, unreasonable burden on competitiveness as analyzed in Section I.C.1.a.(vi).

I.C.1.a.(vi) Consider the economic, energy, and environmental impacts arising from each option under consideration. In this case, economic reasonableness includes an analysis of the economic impact of the emission unit control option on the EITE stationary source's competitiveness within the marketplace. The audit team must document these determinations and associated analyses in the audit report.

I.C.1.a.(vii) Additional required documentation for all control technologies and strategies must include, but are not limited to, overall implementation cost, control efficiency, remaining useful life of the equipment, impacts to land use approvals, and a quantification of any co-benefits. The level of analysis conducted and documented shall consider the nature of the GHG BAECT measure and potential impacts of these additional criteria.

I.C.1.a.(viii) The GHG BAECT analysis may reference recently permitted GHG best available control technologies (BACT), operational or process limits in the EITE stationary source's air pollution permits or in the RACT/BACT/LAER Clearinghouse for similar operations as applicable.

I.C.1.b. The energy BMP analysis.

I.C.1.b.(i) Unless the EITE stationary source successfully demonstrates that it currently employs energy BMPs pursuant to Section I.C.1.b.(ii) or (iii) and provides the requisite supporting information pursuant to Sections I.C.1.b.(ii)(A) and (B) or I.C.1.b.(iii)(A) to I.C.1.b.(iii)(C), the audit team must analyze energy BMPs as follows:

I.C.1.b.(i)(A) Identify all available energy efficiency measures for the specific energy consumption sources included in the audit scope. Any energy efficiency measure considered to be a GHG BAECT option but not recommended as GHG BAECT must be included in the energy BMP analysis for that GHG emission unit, as applicable. This analysis can exclude any control technologies that redefine the stationary source.

I.C.1.b.(i)(B) Eliminate technically infeasible energy efficiency measures.

I.C.1.b.(i)(C) Rank remaining energy efficiency measures based on the reduction in energy use per ton of final product manufactured at the facility.

I.C.1.b.(i)(D) Perform a cost-effectiveness analysis on all energy efficiency measures considering the full lifetime of the measure. The cost-effectiveness analysis must include an estimate of the net levelized cost per energy consumption reduction over the life of the equipment. The audit team must document in the audit report the discount rate, which is of no more than 8%, used for the cost-effectiveness analysis. The net levelized cost analysis should include, but is not necessarily limited to, the following costs and benefits:

I.C.1.b.(i)(D)(1) Engineering and design costs;

I.C.1.b.(i)(D)(2) Equipment costs including installation;

I.C.1.b.(i)(D)(3) Available tax credits and/or incentive programs; and

I.C.1.b.(i)(D)(4) Changes in the following annual costs resulting from the control technology/method including energy costs, operations and maintenance costs, and changes to productivity and/or product quality.

I.C.1.b.(i)(E) Eliminate cost-prohibitive energy efficiency measures considered. Energy efficiency measures with a cost-effectiveness equal to or under the social cost of GHGs cannot be eliminated as cost-prohibitive, except for a demonstrated, unreasonable burden on competitiveness shown in Section I.C.1.b.(i)(F).

I.C.1.b.(i)(F) Consider the economic, energy, and environmental impacts arising from each measure remaining under consideration. In this case, economic reasonableness includes an analysis of the economic impact of the measure on the EITE stationary source's competitiveness within the marketplace. The audit team must document these determinations and associated analyses in the audit report.

I.C.1.b.(i)(G) Additional required documentation for all analyzed measures include, but are not limited to, cost-effectiveness, remaining useful life of the equipment, impacts to land use approvals and any co-benefits. The level of analysis conducted and documented shall consider the nature of the energy efficiency measure and potential impacts of these additional criteria.

I.C.1.b.(ii) In lieu of performing the energy BMP analysis, certification within 12 months of the audit date under the annual Federal Energy Star Program will be determined as employment of energy BMPs for the EITE stationary source. Annual Energy Star certification documentation for all years subsequent to the previous audit as well as the current certification must be included in the audit report and contain:

I.C.1.b.(ii)(A) Specific BMP energy efficiency measures the EITE stationary source used to achieve the Federal Energy Star Program certification; and

I.C.1.b.(ii)(B) The annual Energy Performance Indicator (EPI) benchmarking spreadsheet demonstrating a score of 75 or higher submitted with the Energy Star application.

I.C.1.b.(iii) In lieu of performing the energy BMP analysis, registration to ISO 50001 within 12 months of the audit date will be determined as employment of energy BMPs for the EITE stationary source. Management system documentation must be included in the audit report and contain:

I.C.1.b.(iii)(A) Specific BMP energy efficiency measures the EITE stationary source used to achieve the ISO 50001 Program certification;

I.C.1.b.(iii)(B) Information on the energy management system including the Manual, Objectives and Goals, Energy Policy and results of the most recent energy management system audit; and

I.C.1.b.(iii)(C) The valid registration certificate.

I.C.1.b.(iv) If an EITE stationary source fails to achieve the annual certification by the EPA Energy Star Program or registration to ISO 50001, the source must submit a compliance action plan to the Division within 90 days of the certification or registration expiration. The plan must include the EITE stationary source's plan and timeline to implement energy BMPs to either reacquire certification in the EPA Energy Star Program, reacquire ISO 50001 registration, or comply with the requirements in Section I.C.1.b.(i). The energy BMPs must be achieved within twelve months after the compliance action plan is approved by the Division.

I.C.1.c. The GHG BAECT and energy BMP recommendation.

I.C.1.c.(i) The GHG BAECT recommendation will include:

I.C.1.c.(i)(A) Recommendations on the most effective direct GHG emissions control technology and strategy, or suite of technologies and strategies, for the GHG emissions unit analyzed as GHG BAECT;

I.C.1.c.(i)(B) A list of emissions control measures with a levelized cost less than or equal to $0; and

I.C.1.c.(i)(C) Recommendations on GHG BAECT options that provide greater co-benefits to the surrounding communities where the top emission unit control technologies or strategies are comparable in terms of cost-effectiveness.

I.C.1.c.(i)(D) A calculation of the Non-GHG BAECT emissions. Non-GHG BAECT emissions are calculated by subtracting the reported emissions from units evaluated for GHG BAECT from the facility annual emissions at the time of the first audit. This shall be calculated as follows:

Non-GHG BAECT Emissions = Total direct emissions from the most recent year reported – (reported emissions from the units evaluated for GHG BAECT)

I.C.1.c.(ii) The energy BMP recommendation will include:

I.C.1.c.(ii)(A) Recommendations on the most effective energy efficiency measures for the energy consumption sources analyzed to be set as Energy BMPs.

I.C.1.c.(ii)(B) A list of energy efficiency measures with a levelized cost less than or equal to $0;

I.C.1.c.(ii)(C) Recommendations on Energy BMP options that provide greater co-benefits to the surrounding communities where the top emissions unit control technologies or strategies are comparable in terms of cost effectiveness.

I.C.1.d. A plain-language summary of the audit findings, determinations, and recommendations in the top two languages spoken by the community surrounding the EITE stationary source. This summary shall include the list of GHG BAECT options for the emission units analyzed, how they were ranked and why they are being recommended.

I.C.1.e. Confidential business information must be clearly identified and be submitted in a separate, supplementary document to the audit report.

II. GHG BAECT and Energy BMP Determination

II.A. Within 60 days of receipt of the audit report, the Division will determine GHG BAECT and energy BMPs for the EITE stationary sources as follows:

II.A.1. The GHG BAECT determination may be based on the top-ranked control technology for the emission units in the audit report, or a suite of control technologies, at the Division's discretion, so long as:

II.A.1.a. The cost of the suite of control measures, combined, would not be unduly burdensome to the facility; and

II.A.1.b. The total annual CO2 emissions reductions generated by the suite of measures is equal to or greater than the annual CO2 emissions reductions generated by the top-ranked control technology according to the audit report.

II.A.2. A GHG BAECT determination will be issued for each GHG emissions unit in the audit scope and include:

II.A.2.a. The Division's determination of specific control technologies and/or measures for that emission unit, including the current GHG emissions rate of each audited emission unit at the time of the audit;

II.A.2.b. All control technologies found under Section I.C.1.a. to have a net levelized cost less than or equal to $0, where cost neutrality can be achieved no more than 5 years from operational date of the technology, except where the auditor has established that doing so would pose an unreasonable burden to the facility; and

II.A.2.c. The GHG emission rate per unit of final product at the EITE stationary source for the individual emissions units after implementation of the prescribed measures.

II.A.2.d. The final GHG BAECT and energy BMP intensity rate determination shall be issued for the EITE stationary source as a rate of total GHG emission (CO2e) for the emissions units included in the audit scope per final product of the facility. This calculation shall be based on the determination(s) in Sections II.A.1. and II.A.3. (as applicable) and shall be calculated as follows:

II.A.2.d.(i) The Division may adjust the final GHG BAECT and energy BMP intensity determination based on a change to the GHG emission rate for any GHG BAECT measure after the GHG reduction measure is fully operational and tuned.

GHG BAECT & Energy BMP Intensity Rate Determination = Σ (CO2e per tons of facility product for each emission unit in audit scope).

II.A.3. The energy BMP determination will be issued for each energy consumption source in the audit scope and include:

II.A.3.a. The Division's determination of energy BMPs for the specific energy consuming equipment; and

II.A.3.b. Any energy efficiency measures found under Section I.C.1.b. to have a net levelized cost less than or equal to $0 that are not included in the BAECT determination, unless the auditor has established that doing so would pose an unreasonable burden to the facility.

II.B. The Division will hold one or more public meetings on the results of the final GHG BAECT and energy BMP determinations.

II.C. Within 45 days of making its final GHG BAECT and energy BMP determinations, the Division will present the determinations at a regular meeting of the Commission. The Commission may approve the determinations or return them to the Division for further analysis. The Division will return to the Commission for final approval at its next regular meeting or as soon as practical.

III. Emission Reduction Requirements

III.A. All EITE stationary sources subject to this rule must reduce facility-wide GHG emissions by 5 percent.

III.A.1. EITE stationary sources annual emissions limitation shall be calculated as described in this Section III.A.1. Multiply the EITE stationary source's prescribed final GHG BAECT and energy BMP intensity rate determination, as determined by the Division under Section III. by the number of units produced in the calendar year, to result in a GHG BAECT mass emission number. If an EITE stationary source produces more than one product and, as a result, has more than one final GHG BAECT determination, the GHG BAECT mass emissions is calculated by multiplying the intensity rate for each product by the amount of product produced in the previous year, to calculate the GHG BAECT mass emissions for each product, and then adding the mass emissions for each product to calculate the GHG BAECT mass emissions. Add the Non-GHG BAECT emissions calculated under Section I.C.1.c.(i)(D) to the GHG BAECT emissions number, resulting in a mass-based emissions representing the facility-wide total GHG emissions (CO2e), which serves as the baseline for the 5 percent mass-based reduction. Subtract the five (5) percent mass emissions reduction as required under Section III. This shall be calculated as follows:

*Annual Emission Limit for Compliance Year in tons CO2e = (((GHG BAECT & Energy BMP Intensity Rate Determination) * (Compliance Year Facility Product)) + Non-GHG BAECT determination) * 0.95*

III.A.2. Beginning no later than the third year after each audit year, EITE stationary sources must demonstrate the additional mass-based five (5) percent GHG emission reduction and continued compliance with the reduction described in this section, by comparing the total mass GHG emissions limitation to the direct reported GHG emissions for the previous year. This is demonstrated through the annual compliance certification in Section V.A.

III.A.3. Where an EITE stationary source's approved compliance action plan requires that the plan be completed and operational after the third year after each audit year, the EITE stationary source must meet an interim annual mass emission limit achieving the required mass-based five (5) percent GHG emission reduction.

III.A.3.a. This interim annual five (5) percent mass reduction shall be calculated by multiplying the EITE stationary source's GHG BAECT and energy BMP intensity rate, as determined by the Division under Section II. by the number of units produced in the third calendar year, to result in a GHG BAECT mass emission number. Add the Non-GHG BAECT emissions to this number. Five (5) percent of this mass emissions total represents the mass GHG emissions reduction required in tons of CO2e. The calculation is as follows:

*((((GHG BAECT & Energy BMP Intensity Rate Determination) * (Compliance Year Facility Product)) + Non-GHG BAECT determination) * 5%)*

III.A.3.b. The interim annual emissions limitation is calculated by multiplying the current GHG emissions intensity rate as documented in the most recent audit by the compliance year facility product to result in a mass GHG emissions total. Add the Non-GHG BAECT emissions to this total, and then subtract the 5% reduction calculated in Section III.A.3.a. The calculation is as follows:

*((Current GHG Emissions Intensity Rate as documented in the audit report * Compliance Year Facility Product) + Non-GHG BAECT determination) – ((((GHG BAECT & Energy BMP Intensity Rate Determination) * (Compliance Year Facility Product)) + Non-GHG BAECT Determination) * 5%)*

III.B. If, at any point after the 2022 audit cycle and before 2030 an EITE stationary source achieves mass based GHG emission reductions equal to or greater than 20% below the source's 2015 GHG emissions baseline, the 5% emission reduction required under Section III.A. is considered satisfied through the year 2030, provided the 20% mass-based reductions are sustained as demonstrated through annual compliance certifications under Section V.A.1. An EITE stationary source meeting this requirement must continue to conduct the annual audits and otherwise comply with the requirements of this rule.

IV. Emission Reduction Requirement Compliance

IV.A. The EITE stationary source must submit a compliance action plan within 120 days of the Commission's approval of the GHG BAECT, energy BMPs, and GHG BAECT and energy BMP intensity rate determination that includes the EITE stationary source's plan and timeline to comply with the annual mass emission limit, and interim mass emission limit in Section IV.A.2.d. as applicable and the energy BMPs determination.

IV.A.1. The EITE stationary source may use the following emission reduction mechanisms to comply with the annual and interim emission limits:

IV.A.1.a. Actual, direct emissions reductions onsite at the EITE stationary source; or

IV.A.1.b. Actual direct GHG emission reductions submitted in the form of GHG credits awarded by the Division. In order to produce GHG credits, the emissions reductions must be real, additional, verifiable, permanent and enforceable. GHG credits will only be issued in the tracking system after emission reduction have been demonstrated; or

IV.A.1.c. Installation and utilization at the facility of a retail distributed generation or net meter renewable energy project that reduces the GHG emissions from the EITE stationary source's electrical energy use, and for which the EITE stationary source has retired Renewable Energy Credits in Colorado generated that year, which demonstrate emissions reductions to comply with Section III.A. Utilization of Renewable Energy Credits for compliance cannot exceed the annual generation of the distributed generation system and it can only be used to satisfy the five (5) percent GHG emission reduction associated with Section III.A. and shall not be used for any other component of the annual emission limitation.

IV.A.2. If the measure(s) determined to be GHG BAECT and/or energy BMPs for an emission unit also are anticipated to result in significant co-benefits, then the EITE stationary source must demonstrate in its compliance action plan that the co-benefits will be achieved through comparable reductions of the relevant harmful air pollutant(s) at the EITE stationary source. If an EITE stationary source demonstrates there are no material co-benefits from the implementation of the measure(s) determined to be GHG BAECT and/or energy BMPs, these requirements do not apply.

IV.B. Beginning no later than the third year after each audit year, EITE stationary sources must demonstrate the additional mass-based five (5) percent GHG emission reduction described in this Section V. through the annual compliance certification in Section V.A.1.

IV.C. When considering compliance options with similar or the same cost-effectiveness, the EITE entity must give increased priority to GHG reduction initiatives that would produce co-benefits to the neighboring communities surrounding the EITE stationary source.

IV.D. The Division will review the compliance action plan for approval.

IV.E. EITE stationary sources must comply with the compliance action plan once approved by the Division.

IV.F. If in any calendar year an EITE stationary source achieves reported emissions lower than the annual emissions limitation, the Division will award the EITE stationary source GHG credits equal to the difference between the annual emissions limitation and reported emissions. GHG credits will only be issued after emission reductions have been demonstrated.

IV.G. If in any calendar year an EITE stationary source fails to achieve the annual emissions limitation, the owners and operators may remedy this noncompliance by surrendering in the EITE entity's compliance account sufficient GHG credits so as to reduce the actual emissions to the EITE annual emissions limitation.

V. Reporting

V.A. Owners or operators of EITE stationary sources must submit an annual report to the Division by May 1 of each year (beginning May 1, 2026) that includes:

V.A.1. Annual Compliance Certification Requirements. The account representative of each EITE stationary source must submit a compliance certification to the Division or its agent that certifies:

V.A.1.a. The EITE stationary source's annual GHG emissions, in metric tons, for the previous calendar year;

V.A.1.b. The total production at the EITE stationary source, in units that are consistent with the GHG BAECT and energy BMP intensity rate determination, for the previous year;

V.A.1.c. The EITE stationary source's GHG emissions rate per product for the previous calendar year and the GHG BAECT and energy BMP intensity rate determination.

V.A.1.d. The EITE stationary source's annual emissions limitation for the previous year;

V.A.1.e. The difference, if any, between the EITE stationary source's actual total direct GHG emissions for the previous year and the EITE stationary source's annual emissions limitation for the previous year.

V.A.1.f. For EITE stationary sources that are complying through GHG credits pursuant to Section VI.A.1.b.:

V.A.1.f.(i) In the event that the EITE stationary source has actual total emissions that exceed its annual emissions limitation, the compliance certification shall specify the GHG credits that are to be surrendered from the EITE stationary source's compliance account sufficient to meet the EITE stationary source's annual emissions limitation.

V.A.2. Current project status to implement GHG BAECT or energy BMPs contained in a compliance action plan under Section IV.A.;

V.A.2.a. The current status of measures to achieve comparable co-benefits required under Section IV.A.2.

V.A.3. If the EITE stationary source is determined to be employing energy BMPs through certification to the Federal Energy Star Program or the ISO 50001 standard, the EITE stationary source must submit the information in accordance with Section I.C.1.b.;

V.A.4. Instances of noncompliance with the Division's approved GHG BAECT and energy BMPs determination, compliance action plan, reason(s) for noncompliance, and actions taken or planned to return to compliance; and

V.A.5. All information necessary for the Division to confirm the EITE stationary source's emission rate in the prior year.

V.B. In addition to the annual report, owners and operators of EITE stationary sources must submit a final audit update to the Division within 60 days of the operation of GHG BAECT and/or energy BMPs, which includes verification that all GHG BAECT and energy BMP measures established in Section II. are operational.

VI. Recordkeeping

VI.A. EITE stationary sources must maintain records for a period of ten (10) years and make records available to the Division upon request, including:

VI.A.1. Division approved audit plan.

VI.A.2. Final audit reports.

VI.A.3. Commission approved GHG BAECT and energy BMP determinations.

VI.A.4. Annual Compliance Certificate.

VI.A.5. Approved compliance action plans and records reasonably necessary to demonstrate compliance with the approved plan.

VI.A.6. Current certification or registration documentation to applicable standards to show continued compliance with Section I.C.1.b.(ii) or (iii).

VI.A.7. If the final GHG BAECT is determined to have an operation date that is beyond the next 5-year audit, the EITE stationary source must maintain records of project management documentation related to the implementation of the GHG BAECT measure including project status, timeline, expected operational date as proposed and approved in the compliance action plan.

PART D Greenhouse Gas Credit Trading

I. Establishment and Maintenance of Accounting and GHG Credit Tracking System and Accounts

I.A. By December 1, 2024, the Division or its agent will establish a GHG credit trading system.

I.B. Upon receipt of the registration application required under Part D, Section I., the Division or its agent will establish one (1) credit account for each manufacturing stationary source in the GHG credit trading system.

I.C. The Division will assign a specific identifier in the GHG credit trading system to a regulated source located within a disproportionately impacted community.

I.D. If there is no activity on a credit account(s) in the GHG credit trading system for eighteen (18) months or longer, the Division may purge the unused credit account(s) from the GHG credit trading system as long as the Division provides written notice to the account representative(s) of the intended purge and either the account representative(s) does not respond to the Division's written notice of the intended purge in writing within a reasonable time or the account representative(s) agree to the purge in writing.

II. Registration for the Greenhouse Gas Credit Trading System

II.A. All manufacturing stationary sources must submit a registration application for a credit account to the Division or its agent as follows.

II.A.1. All GEMM 2 facilities must submit a registration application for a credit account in the GHG credit trading system to the Division or its agent by December 31, 2024, or within thirty (30) days after the GEMM 2 facility first reports annual direct GHG emissions equal to or greater than the 25,000 metric tons of CO2e threshold, whichever occurs later.

II.A.2. All EITE stationary sources must submit a registration application for a credit account in the GHG credit trading system to the Division or its agent within thirty (30) days after the Commission approves the EITE stationary sources' GHG BAECT and energy BMP determination, or within thirty (30) days after the EITE stationary source first reports annual direct GHG emissions equal to or greater than the 25,000 metric tons of CO2e threshold, whichever occurs later.

II.B. Any individual who requires access to the GHG credit trading system on behalf of a manufacturing stationary source must register as a user in the GHG credit trading system.

II.B.1. Each account representative shall represent, and by his or her representations, actions, inactions, or submissions, legally bind the manufacturing stationary source in all matters relating to Regulation Number 27. Any representation, action, inaction, or submission by any authorized account representative will be deemed to be a representation, action, inaction, or submission by the source.

II.C. In addition and in connection with each registration application, registration applicants must include other information that the Division deems necessary, including but not limited to the following information.

II.C.1. Legal name(s), physical and mailing addresses, contact information, date and place of incorporation, and any identification number assigned by the incorporating agency of the owner or operator that controls the manufacturing stationary source;

II.C.2. Legal name(s), mailing addresses, and contact information of the directors and officers with authority to make legally binding decisions on behalf of the manufacturing stationary source, including any partners with over ten (10) percent control of a partnership that owns or controls the manufacturing stationary source, including any individual or entity doing business as the limited partner or the general partner;

II.C.3. Legal name(s) and contact information of person(s) with over ten (10) percent control of the voting rights attached to all the outstanding voting securities of the entity that owns or controls the manufacturing stationary source;

II.C.4. A business number, if one has been assigned to the entity by a Colorado state agency, to the entity that owns or controls the manufacturing stationary source;

II.C.5. NAICS code, AIRS ID, and EPA's Greenhouse Gas Reporting Program Facility ID for the manufacturing stationary source;

II.C.6. A government-issued taxpayer or Employer Identification Number or, for entities located in the United States, a U.S. Federal Tax Employer Identification Number, if assigned, for the entity that owns or controls the manufacturing stationary source;

II.C.7. A confirmation of whether the manufacturing stationary source is located within a disproportionately impacted community using Colorado EnviroScreen; and

II.C.8. Legal name(s) and contact information of the designated primary account representative and at least one, and up to four, alternate account representatives.

III. Greenhouse Gas Credit Trading Requirements

III.A. GHG credits will be generated as follows.

III.A.1. For the purpose of trading GHG credits between EITE facilities, EITE facilities will generate one (1) GHG credit per metric ton of CO2e for each metric ton of CO2e that the relevant facility's annual direct GHG emissions are less than its annual emissions limitation in the relevant year.

III.A.2. For the purpose of trading GHG credits between GEMM 2 facilities:

III.A.2.a. Subject to Section III.A.2.a.(i), in any compliance year, a GEMM 2 facility will generate one (1) GHG credit for each metric ton of CO2e that the facility's annual direct GHG emissions are less than its GEMM 2 annual GHG emissions requirement for 2030.

III.A.2.a.(i) In any compliance year, a GEMM 2 facility with a production-related adjusted baseline will generate one (1) GHG credit for each metric ton of CO2e that the facility's annual direct GHG emissions are less than the result of the below calculation:

*(Higher of the GEMM 2 facility's 2021 or 2022 emissions, as reported under Regulation Number 22) * 2030 GEMM 2 facility GHG percentage reduction requirement as specified in Part B, Section I.A.)*

III.A.2.b. Beginning in the 2031 compliance year, a GEMM 2 facility may generate one (1) GHG credit per one (1) metric ton of CO2e quantifiably reduced through offsite direct air carbon capture projects, provided, however, that such projects may be used for compliance with this Regulation Number 27 only after the Division approves a protocol governing the implementation of such projects.

III.A.3. GHG credit trading between EITE and GEMM 2 facilities will be allowed beginning in 2025 subject to Division guidance to be published no later than December 1, 2024.

III.B. The Division will issue GHG credits to manufacturing stationary sources as follows.

III.B.1. On an annual basis beginning with the 2024 compliance year, and by the first Tuesday of May 2025 and on the first Tuesday of each May thereafter, the Division will credit GHG credit trading system credit accounts of an operating GEMM 2 facility that have submitted all reports in accordance with Section IV.A, as verified by the Division, with GHG credits equal to the difference between the facility's annual direct GHG emissions in the applicable compliance year and its GEMM 2 annual GHG emissions requirement for 2030 as established in Part B, Section I. A GEMM 2 facility which has ceased operations may not generate GHG credits.

III.B.2. The Division will annually issue GHG credits in the GHG credit trading system to an EITE stationary source to the extent its annual direct GHG emissions in the applicable compliance year are less than its annual emissions limitation in the applicable compliance year, as a result of permanent, real, and verifiable emission reduction measures implemented at the EITE stationary source.

III.B.3. Each GHG credit issued by the Division in the GHG credit trading system will be uniquely identifiable.

III.B.4 By the third Tuesday of May 2025 and each third Tuesday of May thereafter, the Division will publish on its website the total amount of any GHG credits credited collectively to the compliance accounts of manufacturing stationary sources for the previous calendar year, and the cumulative surplus or shortfall of credits for that vintage year.

III.C. A GHG credit will expire three (3) years after its issuance date in the GHG credit trading system unless it is retired prior to expiration in the GHG credit trading system. An expired GHG credit may no longer be retired, sold, or transferred in the GHG credit trading system.

III.D. To avoid double-counting of GHG emission reductions, GHG credits generated under this Regulation Number 27, Part D, may not be sold into or used in any carbon or GHG offset registry or trading market outside of the GHG credit trading system.

III.E. Subject to Part D, Section III.A.3, any manufacturing stationary source may sell GHG credits to any other manufacturing stationary source upon such terms as agreed upon between the manufacturing stationary sources at any time, except to the extent the GHG credits are offered for sale pursuant to an auction under Part D, Section IV. Within thirty (30) days of completing any GHG credit sale, the manufacturing stationary sources participating in the transaction will report to the Division, through a Division-approved process, the quantity and price or other consideration, for each vintage year(s) of GHG credits sold, and the Division shall post on its website the parties, quantity, and vintage year(s) of GHG credits sold within thirty (30) days of receiving such report. The Division may elect to publish pricing information from such reports.

III.E.1. Upon reporting of a GHG credit transaction, the GHG credits subject to the trade will be transferred from the selling party's compliance account to the buying party's compliance account within the GHG credit trading system.

III.E.2. In selling GHG credits, the seller warrants and represents that the credits generated are based on an accurate reporting of GHG emissions for the relevant year. Buyers of GHG credits buy GHG credits with this assurance.

IV. Annual GHG Credit Auctioning

IV.A. On June 30, 2025 and each June 30 or first business day thereafter, the auction administrator will administer a voluntary GHG credit auction. Only manufacturing stationary sources may participate in any GHG credit auction to buy or sell GHG credits.

IV.A.1. The auction administrator shall create a publicly available website for publishing information related to the annual auction. The website shall contain the following information:

IV.A.1.a. General guidance on the process, including how bids and offers are used to determine the auction settlement price and the total quantity of GHG credits sold at auction.

IV.B. Beginning the third Tuesday of May 2025 and each third Tuesday of May thereafter, the auction administrator shall publish a notice of auction on its website, with the following information:

IV.B.1. Auction application requirements and instructions;

IV.B.2. The form and manner for submitting bids;

IV.B.3. The procedures for conducting the auction; and

IV.B.4. The time, date, and procedures for a second round of the auction, if necessary, pursuant to Section IV.I.

IV.C. By May 31, 2025 and every May 31 thereafter, any manufacturing stationary source that desires to participate in the auction, for each vintage year of GHG credits, as a bidder or offeror must inform the auction administrator in writing in order to participate and submit bids or offers, respectively, in the auction. Failure to provide such notice for a vintage year of GHG credits precludes the manufacturing stationary source from participating in that year's annual auction process for the respective vintage year.

IV.C.1. A manufacturing stationary source that offers to sell GHG credits in one or more vintage years in any auction is not eligible to bid to purchase GHG credits from the same vintage years in the same auction, but is eligible to bid on GHG credits from vintage years different than those offered for sale.

IV.C.2. A manufacturing stationary source that bids to buy GHG credits in one or more vintage years in any auction is not eligible to offer to sell GHG credits from the same vintage years in the same auction, but is eligible to offer GHG credits for sale from vintage years different than those bid for purchase.

IV.D. Three (3) business days after receiving notices of intent to participate, the auction administrator will determine whether a sufficient number of bidders and offerors have given notice of their intent to participate in the annual auction. A sufficient number requires more than zero offerors and more than zero bidders. If there is a sufficient number of bidders and offerors, then the auction administrator will publish a notice stating that the auction will take place that year and will provide the number of bidders and offerors that have provided a notice of intent to participate. If there is not a sufficient number of bidders and offerors, then the auction administrator will publish a notice on its website canceling the auction for that year, and the timeline in the remaining sections of this Part D shall not apply.

IV.E. Auction window. Five (5) business days after May 31 of the relevant year, the auction administrator will accept bids and offers from bidders and offerors, respectively, for each vintage year of GHG credits through the website managed by the auction administrator, and the auction administrator shall allow bids and offers to be submitted by no later than June 15 of the relevant year.

IV.E.1. The auction bidding window may be delayed, rescheduled, or canceled due to technical systems failures.

IV.E.1.a. The bidding and offering window may be rescheduled by the auction administrator due to technical system failures. If technical systems failures cannot be resolved and a bidding window cannot be rescheduled to meet the requirements of this section, then the auction administrator will cancel the auction bidding window.

IV.F. All bids for GHG credits will be considered a binding commitment for the purchase of GHG credits under the rules of the auction. All offers for GHG credits submitted for sale in the auction will be considered a binding commitment for the sale of GHG credits under the rules of the auction, and by offering GHG credits for sale, potential sellers warrant and represent that the credits generated are based on an accurate reporting of GHG emissions for the relevant year.

IV.G. Auction Format

IV.G.1. A separate auction will be held for each vintage year of GHG credits, and each auction will consist of a single round of bids and offers for GHG credits of the applicable vintage year.

IV.G.2. Each individual manufacturing stationary source may only act as a bidder or offeror of GHG credits for an individual vintage year in the annual auction, consistent with Section IV.C.

IV.G.3. Bidders submit bids and offerors submit offers.

IV.G.4. Each bidder may submit multiple bids for each vintage year of GHG credits.

IV.G.5. Each offeror may submit multiple offers for each vintage year of GHG credits.

IV.G.6. Bids and offers will be sealed and given confidential treatment.

IV.G.7. Bids and offers must specify the quantity of GHG credits to be transacted and must be submitted as multiples of ten (10) GHG credits.

IV.G.8. Bids and offers must be submitted in U.S. dollars and whole cents, on a per-GHG credit basis.

IV.G.9. Bids and offers must specify the vintage year of the GHG credits for which they are made.

IV.H. Determination of Winning Bidders and Settlement Price. For each auction of each vintage year of GHG credits, the following process shall be used to determine a single auction settlement price, allocations of GHG credits sold to bidders, and proceeds from such sales to offerors:

IV.H.1. Each bid will consist of a price and the quantity of GHG credits of the applicable vintage year, in multiples of ten (10) GHG credits, desired at that price.

IV.H.2. Each offer will consist of a price and the quantity of GHG credits of the applicable vintage year, in multiples of ten (10) GHG credits, available for sale at that price.

IV.H.3. Each bidder may submit multiple bids for each vintage year of GHG credits.

IV.H.4. Each offeror may submit multiple offers for each vintage year of GHG credits.

IV.H.5. Beginning with the highest bid price, bids from each bidder will be considered in declining order by price.

IV.H.6. Beginning with the lowest offer price, offers from each offeror will be considered in ascending order by price.

IV.H.7. The auction administrator will develop a Division-approved protocol for determining which GHG credits are exchanged and at what price through the auction, which will be every GHG credit for which a bid price exceeds or is equal to an offer price associated with the GHG credit considered in the order prescribed in Sections IV.H.5 and IV.H.6 offered into the auction.

IV.H.7.a. The protocol, through the single auction settlement price, must ensure that no bidder pays more per GHG credit than the bidder bid for a particular GHG credit, and no offeror receives less per GHG credit than the offeror offered for a particular GHG credit.

IV.H.7.b. The protocol will also provide a method for resolving tie bids and offers in a reasonable and equitable manner. The protocol shall also address, in a reasonable and equitable manner, circumstances where the lowest bid price exceeds the offer price at that quantity of total credit sales.

IV.H.7.c. Under the protocol, the auction administrator will determine the auction settlement price, and it will determine from which winning offeror(s) a winning buyer will purchase GHG credits.

IV.I. Additional auction. If, in the first round of the auction for any vintage year's auction pursuant to Sections IV.G and IV.H, the total GHG credits sold through the auction is less than 50% of the total GHG credits contained cumulatively in all the offers submitted to the auction for the applicable vintage year, then there will be an additional auction round for any such vintage year of remaining GHG credits not sold in the first auction round.

IV.I.1. Within five (5) business days after the first auction, the auction administrator shall publish the auction settlement price from the first round of the auction for any vintage year, the highest and lowest bid price, and the highest and lowest offer price, the total number of GHG credits offered, and the median of all bid prices and offer prices, from the initial auction round.

IV.I.2. There shall only be one additional auction round. Bids and offers for the additional auction shall be received by the auction administrator no later than three (3) business days after the publication of the results of the first auction pursuant to Section IV.I.1, and the additional auction shall be held within five (5) business days after publication of the results of the first auction pursuant to Section IV.I.1.

IV.J. Actions following auction.

IV.J.1. Within two (2) business days following an auction or any additional auction round held pursuant to Section IV.I, the auction administrator will notify, by vintage year:

IV.J.1.a. Each winning bidder of the auction settlement price, the number of GHG credits that the bidder purchased, the bidder's total purchase cost, and to which sellers of GHG credits to direct payment.

IV.J.1.b. Each winning offeror of the auction settlement price, the number of GHG credits that the offeror sold, the offeror's total sales revenue, and from which bidders to expect payment.

IV.J.2. Within fifteen (15) business days following an auction or any additional auction round held pursuant to Section IV.I, the auction administrator will publish the following information:

IV.J.2.a. The identity of the manufacturing stationary sources that were bidders, but shall not publish the bids made by such entity nor the total quantity of GHG credits purchased by such entity;

IV.J.2.b. The identity of the manufacturing stationary sources that were offerors, but shall not publish the offers made by such entity nor the total quantity of GHG credits sold by such entity;

IV.J.2.c. The Auction settlement price; and

IV.J.2.d. Aggregated or distributional information on bids, offers, and GHG credit purchases.

IV.J.3. To transfer the GHG credits sold at auction from the respective seller's credit account to the respective buyer's credit account, the seller and buyer shall provide notice to the Division requesting the GHG credits be transferred.

PART E Statements of Basis, Specific Statutory Authority and Purpose

I. Adopted: October 22, 2021

(Removed from Regulation Number 22 and placed in Regulation Number 27 April 20, 2023)

Revisions to Regulation Number 22, Part B, Section II.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and -110.5, C.R.S., and the Air Quality Control Commission's ("Commission") Procedural Rules, 5 C.C.R. §1001-1.

Basis

In HB 19-1261, now codified in part at §§ 25-7-102(2) and -105(1)(e), C.R.S., the General Assembly declared that "[c]limate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life[,]" acknowledged that "Colorado is already experiencing harmful climate impacts[,]" and that "[m]any of these impacts disproportionately affect" certain disadvantaged communities. § 25-7-102(2), C.R.S. The General Assembly also recognized that "[b]y reducing greenhouse gas pollution, Colorado will also reduce other harmful air pollutants, which will, in turn, improve public health, reduce health care costs, improve air quality, and help sustain the environment." § 25-7-102(2)(d), C.R.S.

Consequently, the General Assembly updated Colorado's statewide greenhouse gas (GHG) pollution reduction goals so as to achieve a 26% reduction of statewide GHG by 2025; 50% reduction by 2030; and 90% reduction by 2050 as compared to 2005 levels. § 25-7-102(2)(g), C.R.S. Statewide GHG pollution is defined as "the total net statewide anthropogenic emissions of carbon dioxide [(CO_2)], methane [(CH_4)], nitrous oxide [(N_2O)], hydrofluorocarbons [(HFCs)], perfluorocarbons [(PFCs)], nitrogen trifluoride [(NF_3)], and sulfur hexafluoride [(SF_6)] expressed as carbon dioxide equivalent [(CO_2e)] calculated using a methodology and data on radiative forcing and atmospheric persistence deemed appropriate by the commission." § 25-7-103(22.5), C.R.S.

§ 25-7-105(1)(e), C.R.S., sets forth the framework for developing GHG abatement rules consistent with the statewide GHG pollution reduction goals in § 25-7-102(2)(g), C.R.S. This provision grants the Commission broad authority to regulate GHG emissions in order to accomplish these goals.

In order to evaluate the utilization of, and potential emissions reductions from, GHG best available emission control technologies (BAECT) and best available energy efficiency practices (referred to as best management practices or Energy BMP) in energy-intensive trade-exposed (EITE) stationary sources, the Commission adopted in Regulation Number 22, Part B, Section II, rules governing emission control and energy audits from these sources and requiring a five percent reduction in GHG emissions therefrom.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act (Act), specifically § 25-7-105(1), C.R.S., directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102, C.R.S., and that are necessary for the proper implementation and administration of the Act.

§ 25-7-105(1)(e), C.R.S., authorizes the Commission to promulgate implementing rules and regulations consistent with the statewide GHG pollution reduction goals in § 25-7-102(2)(g), C.R.S. In adopting GHG abatement strategies and implementing rules, the Commission is authorized to take into account other relevant laws and rules to enhance efficiency and cost-effectiveness and solicit input from other state agencies and stakeholders on the advantages of different statewide GHG pollution mitigation measures. § 25-7-105(1)(e)(II) and (IV), C.R.S.

Implementing rules may include regulatory strategies that incentivize development of renewable resources and "enhance cost-effectiveness, compliance flexibility, and transparency around compliance costs." § 25-7-105(1)(e)(V), C.R.S. Further, in promulgating such implementing rules, the Commission is to consider many factors, including, but not limited to: health, environmental, and air quality benefits and costs; the relative contribution of each source or source category to statewide GHG pollution; equitable distribution of the benefits of compliance; issues related to the beneficial use of electricity to reduce GHG emissions; and whether greater or more cost-effective emission reductions are available through program design. § 25-7-105(1)(e)(VI), C.R.S.

§ 25-7-105(1)(e)(IX), C.R.S., authorizes the Commission to require energy-intensive, trade-exposed [(EITE)] stationary sources, "to execute an energy and emission control audit, according to criteria established by the [C]ommission, of the source's operations every five years through at least 2035." The intent of the audit is to determine whether covered sources are employing "best available emission control technologies for [GHG] emissions [(GHG BAECT)] and best available energy efficiency practices [(Energy BMP)]".

§ 25-7-105(1)(e)(XIII), C.R.S., adopted in House Bill 21-1266, directs the Commission to "require a five percent reduction in the [GHG] emissions associated with [EITE] stationary sources that currently employ [GHG BAECT and Energy BMPs], as determined by the Commission, pursuant to [§ 25-7-105(1)(e)(IX), C.R.S.]."

§ 25-7-106, C.R.S., provides the Commission "maximum flexibility in developing an effective air quality program and [promulgating] such [a] combination of regulations as may be necessary or desirable to carry out that program." § 25-7-109(1), C.R.S., authorizes the Commission to adopt and promulgate emission control regulations that require the use of effective practical air pollution controls for each type of facility, process, or activity which produces or might produce significant emissions of air pollutants. An "emission control regulation" may include "any regulation which by its terms is applicable to a specified type of facility, process, or activity for the purpose of controlling the extent, degree, or nature of pollution emitted from such type of facility, process, or activity. . . ." § 25-7-103(11), C.R.S. Emission control regulations may pertain to any chemical compound including GHG pollution. *See* § 25-7-109(2)(c), C.R.S.

Purpose

The Commission adopted Regulation Number 22, Part B, Section II to give effect to the requirements of §§ 25-7-105(1)(e)(IX) and (XII)(B), C.R.S., and to further the reduction of statewide GHG pollution consistent with § 25-7-102(2)(g), C.R.S., as applicable to EITE stationary sources.

§ 25-7-105(1)(e)(IX), C.R.S., authorizes the Commission to require EITE stationary sources, "to execute an energy and emission control audit, according to criteria established by the [C]ommission, of the source's operations every five years through at least 2035." The intent of the audit is to determine whether covered sources are employing GHG BAECT and Energy BMPs. The last audit shall occur in the year 2037.

The audit and GHG emission reduction requirements contained in Part B, Section II are applicable only to stationary sources that principally engage in defined manufacturing activities and have direct GHG emissions equal to or greater than 50,000 tons CO2e per year as reported under 40 CFR, Part 98 and/or Part A of this Regulation Number 22. Based on 2019 data, there are only four stationary sources meeting these requirements: EVRAZ Rocky Mountain Steel's mill in Pueblo, with reported GHG emissions of 305,674 tons CO2e; CEMEX Construction Materials South's Lyons Cement Plant, with reported GHG emissions of 268,643 tons CO2e; GCC Rio Grande's cement manufacturing plant in Pueblo, with reported GHG emissions of 743,403 tons CO2e; and Holcim-Lafarge's cement plant in Florence, with reported GHG emissions of 985,222 tons CO2e.

The fifth highest GHG emission sources in one of these enumerated manufacturing activities reported GHG emissions of approximately 27,000 tons CO2e in 2019.The four EITE stationary sources over 50,000 tons CO2e per year in 2019 remained the only sources over this threshold in 2020 as well. It is notable that, based on 2019 reported data, these four stationary sources contribute approximately 54% of Colorado industrial and manufacturing sector's GHG emissions. Accordingly, this emissions threshold guarantees that the state's largest EITE sources of GHG emissions are employing GHG BAECT and Energy BMPs in their manufacturing processes while appropriately limiting the regulatory burden on smaller sources.

Critical to the success of the GHG BAECT and Energy BMP audit program is the selection of sufficiently rigorous audit protocols and qualified auditors. Accordingly, Section II.C.2. and the associated definitions in Section II.B. establish the minimum qualifications for the auditor and audit team and the criteria and processes by which the audits are to be performed. Under Section II.C.2.a.(v)(A), the Division can reject an auditor if the auditor has a previous or existing relationship with the source that is so pervasive that the auditor would be unable to conduct the audit in an unbiased and independent manner. The Division should consider the extent to which the auditor has advocated on behalf of the EITE stationary source before the Commission; whether the relationship is currently or recently pervasive, compared to a relationship primarily in the past; whether the auditor has primarily acted as an advocate for the EITE stationary source as opposed to a scientific or technical advisor; and whether the work conducted on behalf of the EITE stationary source would, in any way, inhibit the auditor's ability to conduct an independent and unbiased audit.

Prior to executing an audit, the EITE stationary source must submit to the Division for its review and approval of the audit plan, which identifies the audit scope, the audit team and any standards or protocols planned for use in the audit. The Division's review should ensure that the plan is sufficiently rigorous and meets or exceeds national and/or international standards for such audits. Examples of sufficiently rigorous accounting and audit protocols include, but are not necessarily limited to, the GHG Protocol's Corporate Accounting and Reporting Standard (more information available at https://ghgprotocol.org/corporate-standard) and the International Organization for Standardization's (ISO) 14064 and 50001 series (more information available at https://www.iso.org/home.htm).

As set forth in Section II.C.2., the energy and emissions control audit will analyze GHG BAECT for the EITE stationary source's emissions units that emit the top 80% of the stationary source's GHG emissions, and any individual emissions source that represents more than 2% of the emissions from the EITE stationary source. This audit scope is determined by the Division to be broad enough to capture all GHG emission sources at the EITE stationary source except for those considered "de minimis" and provide for a thorough audit of the emissions at the facility.

The Energy BMP audit will assess all emission units that account for 80% of the source's energy consumption. This scope ensures that the audit captures the largest emitting and energy consuming emissions units and that the majority of the EITE stationary source's emissions are examined. It is expected that there may be overlap between these two scopes, which is addressed in Section II.C.3.a.(ii)(A)(1).

Section II.C.3. establishes the audit reporting requirements and detailed steps for the GHG BAECT and Energy BMP analyses. These analyses are conducted on a case-by-case basis for the EITE stationary source under review and incorporate certain objective criteria for the auditor and Division to consider. The GHG BAECT analysis and prioritization process will consider technical feasibility of the control for the stationary source, the estimated emission reductions realized with each measure, cost-effectiveness and environmental, economic, and energy impacts. Additionally, consideration should be given to other factors such as existing facility permit limits, limits and emissions data available for similar operations, and air pollution co-benefits to local communities.

Under Section II.C.3.a.(i)., the control technologies and strategies considered during the GHG BAECT analysis should consider fuel switching, waste to heat options, strategic energy management (SEM) options and carbon capture and underground storage or utilization (CCUS). In evaluating fuel-switching as a control technology, the source should consider switching from coal and petroleum coke to a lower-carbon fuel. In evaluating waste to heat options, the source should consider changing raw material inputs in production processes. In evaluating waste to heat options, the source should consider preheating and heat re-use. The Commission understands that certain of these technologies may not yet be ready for employment as GHG BAECT or Energy BMPs at the stationary sources and expects them to be evaluated for technical feasibility if they are “available.”

The cost-effectiveness evaluation will include the full lifetime of the measure under consideration and all “net levelized” costs to account for costs and costs avoided—or benefits—that may result from adopting a particular control or efficiency measure. These factors are described in further detail at Section II.C.3.a.(i)(D) for GHG BAECT and II.C.3.a.(ii)(A)(4) for Energy BMPs and should include changes in the annual costs resulting from the control technology/method including energy costs, operations and maintenance costs, productivity (e.g. increased production rate or reduced down-time), product quality (e.g. improved quality or reduced rate of rejects/bad batches). As detailed in Part B, Section II.C.3.a.(i)(E) for GHG BAECT and Section II.C.3.a.(ii)(A)(5) for Energy BMPs, measures identified in the audit as technically feasible cannot then be eliminated as cost-prohibitive if the cost-effectiveness of the measure is equal to or less than the avoided social cost of GHGs. Further, any direct or indirect energy, economic and environmental impacts for each potential GHG control measure is to be considered. Economic considerations may include a comparison to direct competitors and international markets for the EITE source’s final product (i.e. steel or cement). Environmental considerations should include any benefits or detriments that may result from a particular measure. Energy considerations should include direct and indirect energy efficiency benefits or detriments, including changes in demand for offsite electric generation.

The social cost of GHG’s cost-effectiveness comparison mechanism ensures that sufficient weight is afforded to the full spectrum of climate impacts from GHG emissions that could be controlled through technically feasible means. As set forth in Part B, Section II.B.41, the social cost of greenhouse gases to be used aligns with that established in § 25-7-110.5(4)(f), C.R.S., through the adoption of House Bill 21-1266. The social cost of GHGs to be used in each GHG BAECT and Energy BMP audit must be consistent with this definition and the Division will review the social cost of GHGs used in the audit recommendations to ensure the values are correctly calculated. Using the social cost of GHGs is an appropriate, objective measure for evaluating potential costs avoided when analyzing the “cost-prohibitiveness” of effective, technically feasible control measures and balancing that against other environmental, energy, or economic impacts, such as competitiveness.

This balancing serves to recognize the externalities resulting from GHG emissions that could be avoided through the use of potentially costly control measures and the limited ability of EITE sources to implement those measures if it would render them uncompetitive in the marketplace and therefore risk unintended consequences, including GHG leakage. Further, Section II.C.3.a(i)(B)(1) sets forth the Commission’s intent that EITE stationary sources will consider and fully evaluate the possibility of employing CCUS or utilization as a control measure for any emissions unit with direct emissions of 100,000 tons CO2e and provide that analysis to the Division at least every five-year audit cycle.

The analysis must go beyond a superficial examination of whether other similar facilities have successfully employed these technologies and must look at the state of the technology and whether it can be successfully employed at the source under review. If it is technically possible to employ these technologies, they must then be evaluated for other factors such as cost-effectiveness and other direct or indirect impacts, like competitiveness in the marketplace.

The intent of this assessment is to objectively and rationally uncover the strengths and weaknesses of CCUS technology at the facility. The assessment should include economic and technical issues associated with carbon capture technology at the specific facility. A feasibility analysis is expressly not required by this rule, but if a facility has conducted a full feasibility analysis within the last 5 years, that information will satisfy the requirement to provide the information in Section II.C.3.a.(i)(B)(1). In subsequent audit cycles, these reports can be updated instead of recreated. In the interest of regulatory efficiency, as an alternative to conducting an Energy BMP audit under Sections II.C.2. and 3, the EITE stationary source will be determined to have conducted a qualifying audit and be currently employing Energy BMPs if the stationary source is certified under the EPA Energy Star Program or is registered to the ISO 50001 - standard for energy management. This alternative pathway was adopted because the underlying programs examine and audit the facility's performance as a whole, and are equally or more rigorous and thorough than the Energy BMP audit contemplated in § 25-7-105(1)(e)(IX)(A), C.R.S. The Federal Energy Star Program is a widely accepted "benchmarking" program managed by EPA and requires annual certification that the facility is sufficiently efficient (reaches a score of 75 or higher out of 100).

More information available at: https://www.energystar.gov/industrial_plants/earn-recognition/plant-certification

ISO 50001 is the internationally recognized energy management system developed by the International Organization for Standards which requires certification every 3 years.

More information available at: https://www.iso.org/iso/iso_50001_energy_management_systems.pdf

Both certifications are appropriate alternative means of demonstrating Energy BMP employment as they require rigorous evaluation of an industrial facility's energy performance and the employment of best available energy practices through either benchmarking in the case of Energy Star or certification to a specific set of requirements for holistic energy management of the facility, in the case of ISO 50001.If the EITE stationary source is not certified under EPA's Energy Star Program or ISO 50001, the EITE stationary source must conduct an Energy BMP audit pursuant to Section II.C.2. and 3.

The GHG BAECT and Energy BMP Recommendation

As described in Section II.C.3.a.(iii), the auditor's recommendation must include: (1) The auditor's recommendation on the most effective technology or strategy or suite of control technologies as determined under Section II.C.3.a.; (2) a list of all control measures with levelized costs less than or equal to $0 as determined in Section II.C.3.a.(i)(D); and (3) recommendations on options that provide greater pollution reduction co-benefits to communities surrounding the EITE stationary source.

The GHG BAECT and Energy BMP recommendation in the audit report serves as the foundation for the GHG BAECT and Energy BMP determination to be made by the Division and ultimately finalized by the Commission. This recommendation consists of the technologies identified through the audit process that would be considered "best" to control and reduce GHG emissions from the emissions units included in the audit scope. The recommendation is documented in the audit report. The GHG BAECT recommendation may be a single technology or reduction measure for the emission unit or a suite of technologies or measures if multiple measures are able to achieve greater reductions and are the same or similar cost-effectiveness.

This approach creates potential for a greater reduction at the same or similar cost to the EITE stationary source, as well as opportunities for increased consideration and inclusion of technologies or measures that have significant co-benefits. The energy BMP recommendation will be issued as a list of the most effective energy efficiency measures for the EITE stationary source for the energy consumption sources included in the audit scope. Both the GHG BAECT and energy BMP recommendations will include a list of measures that have a levelized cost of equal to or less than $0 for the Division's consideration.

The GHG BAECT and Energy BMP recommendation will document the total cumulative GHG emissions intensity rate for all emission units included in the audit scope. This will be calculated by identifying each emissions unit's annual GHG emissions per final product from the EITE source then summing all audited emission unit intensity rates for a total GHG BAECT and Energy BMP GHG emissions intensity rate for the EITE stationary source. If any energy efficiency measure achieves additional GHG reductions for the facility it shall be included in the GHG BAECT emission intensity rate per final product of the EITE stationary source.

The audit report must also show the calculations and recommendation for the total mass emissions from emission units that were not included in the audit scope. This number is integral to the annual emissions limit calculation for each EITE stationary source because the emissions limitation must include all emissions from the facility.

The GHG BAECT and Energy BMP Intensity Rate Determination

The Division will analyze and review the audit report's GHG BAECT and Energy BMP intensity rate recommendations and associated analyses for all emission units included in the audit scope and make a final recommendation to the Commission to establish the GHG BAECT and Energy BMP GHG emissions intensity rate for the EITE stationary source. The Commission may ask questions, require additional information, or grant approval to the Division-determined rate for the facility. The Division will strive to incorporate these briefings into existing briefings or proceedings before the Commission.

After receiving the audit report, the Division's determination will be based on the audit recommendation and the Division may select either the top control identified or a suite of controls that meet certain, enumerated criteria. The Division's GHG BAECT and Energy BMPs determination for each emissions unit or energy-consuming source within the audit scope will include: (1) The specific control or suite of controls selected as GHG BAECT (Section II.d.1.b.) and Energy BMPs (Section II.D.1.c.); (2) the final GHG BAECT and energy BMP intensity rate for the EITE stationary source (Section II.D.1.b.(iv)); and (3), in addition to any controls selected as GHG BAECT and/or Energy BMPs, all controls found to have a net levelized neutral cost over five (5) years from operational date, unless doing so would impose an unreasonable burden to the EITE stationary source as determined by the Division and based upon findings in the audit report (Sections II.D.1.b.(ii) and II.d.1.c.(ii)).

The GHG BAECT and Energy BMP intensity rate is determined from the GHG BAECT analysis for each piece of GHG emitting equipment to calculate a cumulative GHG BAECT and energy BMP Intensity Rate for the facility. This GHG BAECT and energy BMP intensity rate represents a single, cumulative rate for all GHG emitting equipment included in the audit scope, for both GHG BAECT and energy BMPs. This intensity rate does not include any GHG emitting equipment not included in the audit scope.

The calculation is as follows:

> GHG BAECT & Energy BMP Intensity Rate Determination = Σ (CO2e per tons of facility product for each emission unit in audit scope)

Non-GHG BAECT Emissions Calculation

During the audit, the mass total of GHG emissions from the GHG emitting equipment that was not included in the audit scope, or "Non-GHG BAECT emissions," shall be determined. Non-GHG BAECT emissions are calculated by subtracting the reported emissions from units evaluated for GHG BAECT from the facility annual emissions at the time of the first audit. Once reviewed and approved by the Division and Commission, this mass total will remain fixed. This number will be used in calculating the annual emissions limitation for each EITE stationary source.

The calculation is as follows:

> Non-GHG BAECT Emissions = Total direct emissions from the most recent year reported - (reported emissions from the units evaluated for GHG BAECT)

Annual Emissions Limitation Determination

The annual emissions limit must consider all GHG emissions from the EITE stationary source. The direct GHG emitting units that were not included in the audit scope must be included in calculating the limit. Therefore, the GHG BAECT and energy BMP intensity rate determined by the Division must be converted to mass by using the year's production total. *This is done by multiplying the units of production for the EITE stationary source for the year, by the GHG BAECT and energy BMP intensity rate. This results in a mass emissions total which represents the mass emissions from the facility operating all GHG BAECT and energy BMPs during that year. The Non-GHG BAECT emissions are then added to this total, resulting in a mass-based emission total for the EITE stationary source. This is then multiplied by 95% in order to affect the 5% reduction required by statute, the end result of which is the EITE stationary source's "annual emission limit" for the year under review.* Calculation of and compliance with this annual emissions limitation is required beginning in the third year after the audit year, onward. The five percent reduction must be achieved in addition to any subsequent lower GHG BAECT and Energy BMP intensity level determined for the EITE stationary source.

The calculation is as follows:

> Annual Emission Limit for Compliance Year in tons CO2e = (((GHG BAECT & Energy BMP Intensity Rate Determination) * (Compliance Year Facility Product)) + (Non-GHG BAECT Determination)) * 0.95
>
> Compliance Year Facility Product = tons of final product reported to Division by EITE Stationary Source

This calculation links the mass based number to total production and is appropriate for EITE industries. This is a unique set of industries, where there is the potential for "leakage"- that is, for production to move to other locations outside of Colorado, and because of this, state statute specifically treats EITE industries distinctly from other GHG emitting industries. This mass based approach to production may not be appropriate for the industrial sector as a whole or other sectors. This approach gives effect to § 25-7-105(1)(e)(XIII)(B), C.R.S., because it would be consistent with the requirements of § 25-7-105(1)(e)(IX) and would affect a 5% reduction in GHG emissions "associated with [EITE] sources that currently employ [GHG BAECT] and [Energy BMPs], as determined by the [C]ommission...." Pertinent to these reduction requirements, where an EITE source is employing GHG BAECT and Energy BMPs, § 25-7-105(1)(e)(IX) limits the Commission's ability to "impose a direct non-administrative cost on the source directly associated with at least [95%] of the source's [GHG] emissions attributable to manufacturing a good in the state[.]" § 25-7-105(1)(e)(IX)(A), C.R.S. Thus, in order to give effect to this limitation and the emissions reduction required in § 25-7-105(1)(e)(XIII)(B), the 5% reduction requirements must apply to GHG emissions "associated with the [EITE] sources" and "attributable to manufacturing a good in the state."

Use of the emissions limitation approach set forth in GEMM for EITE sources accomplishes this suite of legislative directives. It requires EITE sources to reduce GHG emissions "attributable to manufacturing a good in the state by 5%." It does not impose non-administrative costs on the other 95% of GHG emissions from the source. This provides the EITE sources flexibility to mitigate the costs of the required reductions and provides an incentive to improve efficiency and reduce emissions.

Importantly, it accomplishes all this while allowing EITE sources to adjust production levels based on market forces and meet demand with an annual mass emissions limitation at a GHG intensity of 5% below that accomplished through the employment of GHG BAECT and Energy BMPs without requiring the source to reduce production to accomplish these reductions. This balances the need for substantial and lasting GHG emissions reductions from EITE sources while recognizing the treatment afforded these particular sources by the General Assembly.

Annual Emission Limit Compliance

Pursuant to Sections II.E.1.b. and II.F.2., EITE stationary sources are required no later than the third year after each audit to achieve and maintain an additional mass-based five percent GHG emission reduction below emissions that would be achieved through the employment of GHG BAECT and Energy BMPs, unless an interim emission rate is established under Section II.E.1.c. To demonstrate compliance, EITE stationary sources must submit an annual compliance report with the information set forth in Section II.G.1., including the previous year's GHG emissions; units of product produced; and the GHG BAECT and energy BMP intensity rate determination. The EITE stationary sources must also maintain records for 10 years.

Compliance Pathways

To give effect to the legislative directive § 25-7-105(1)(e)(XIII)(B), C.R.S., and in accordance with the guidance concerning implementing rules in §§ 25-7-105(1)(e)(II), (V), and (VI), C.R.S., in Section II.F.1.c. the Commission provides three pathways to achieve the required emission intensity rate. This includes any one or combination of: direct on-site reductions (Section II.F.1.a.(i)); surrendering reduction credits created by GHG reductions at other regulated sources (Section II.F.1.a.(ii)); and utilization of retail distributed generation or net metering renewable projects that reduce GHG emissions from the facilities' energy use for which RECs have been retired (Section II.F.1.a.(iii)). For the utilization of renewable energy, the RECs retired must be from Colorado and retired in the year generated. Regardless of the compliance pathway utilized, the EITE stationary source must assure that any significant co-benefits are achieved at the EITE stationary source pursuant to Section II.F.1.b.

Utilization of Renewable Energy Credits for compliance cannot exceed the annual generation of the distributed generation system and cannot be used for compliance with the Annual Emissions Limitation for more than the required 5% reduction, nor can they be counted toward the 20% emissions reduction required to exempt the source from further 5% reduction requirements, as those are to be based on direct emissions reductions from the facility.

The megawatt hour (MWh) of distributed generation in avoided GHG emission value shall be based on the relevant electricity provider's reported annual system emissions, calculated in a manner consistent with the Division's AQCC-approved Clean Energy Plan guidance, and be adjusted annually to account for the changing emissions profile of the generation fleet of the source's electricity supplier. This is because a system MWh avoided today may be more emissions intensive than a system MWh avoided in the future.

The Commission recognizes that large capital-intensive emissions reduction projects such as large-scale carbon capture, utilization, and storage may take an extended time to complete. The Commission directs staff to develop a proposal to allow an alternative compliance pathway with an extended timeline, with sufficient guardrails to ensure that cumulative GHG emissions reductions will be greater than those achievable with short-term measures, and that communities near the facility will realize appropriate co-benefits.

Points of Compliance

There are a number of discrete requirements with which the covered sources must demonstrate compliance over the course of each audit cycle. These include:

- Submission of the Audit Plan at least 120 days prior to commencing the audit (Section II.C.2.);
- Submission of the Audit Report no later than December 31, 2022 and every five years thereafter (Section II.C.1.a.);
- Submission and execution of the Compliance action plan within 120 days of the Commission's approval of the GHG BAECT and Energy BMP determination (Section II.F.1.);
- Compliance with annual emission limits established in the GHG BAECT and Energy BMP determination by the third year after each audit year (Sections II.E.1.b. and II.F.2); and
- Submission of annual compliance certification by May 1 beginning in 2026 (Section II.G.1).

Mechanisms for Assuring Compliance

GEMM is generally enforceable as a provision of part 1 of the Act, *see* § 25-7-105(1)(e)(IX) (requiring EITE stationary sources to conduct GHG BAECT and Energy BMP audits), and as an emission control regulation promulgated by the Commission. *See* § 25-7-115(1)(a), C.R.S. Accordingly, noncompliance with GEMM is subject to the injunctive and civil penalty authority of the Division and Commission. *See* §§ 25-7-121 and -122, C.R.S. In addition to these general authorities, f § II.K.1.a. provides an alternative means of addressing noncompliance with the emission reduction requirements of GEMM where the EITE stationary source is utilizing GHG credits to comply. Section II.K.1.a. provides the source an opportunity to rectify any shortcomings in emission reduction requirements under GEMM by surrendering three GHG credits for every ton emitted by the source in excess of its annual emission limit.

Co-benefits

The treatment of co-benefits in the evaluation and determination of co-benefits in the audit and subsequent effects on the Section II.F. compliance pathways and is affected through three mechanisms:

1. In Section II.C.3.a.(i)(G) for BAECT and Section II.C.3.a.(ii)(A)(7) for BMPs, the auditor must evaluate and document expected air quality co-benefits of any BAECT or BMP measure assessed;
2. In Section II.C.3.a.(iii)(A)(4) for BAECT and Section II.C.3.a.(iii)(B)(3) for BMPs, the auditor's recommendation must include as a BAECT and/or BMP the option that provide greater co-benefits to the surrounding communities where the top options are otherwise comparable in terms of cost-effectiveness; and
3. In Section II.F.1.b., where an EITE source complies with the annual emission limit, it must also achieve the co-benefits to the local community where "the measure(s) determined to be GHG BAECT and/or energy BMPs for an emission unit also are anticipated to result in significant co-benefits[.]"

As to this final point, the express intent is to ensure that any localized co-benefits that would be realized through implementation of the specific BAECT or BMPs identified in the audit are still realized for the local community, regardless of which compliance pathway the source utilizes. This is explicitly intended to benefit local communities and particularly those disproportionately impacted by climate change and other air quality issues and is in response to input from communities and local governments.

The quantification of any co-benefits under Sections II.C.3.a.(i)(G) and II.C.3.a.(ii)(A)(7) must include establishment of a baseline for the relevant pollutant(s) and quantification of net co-benefits from the control technologies and strategies below or above the baseline. The baseline shall be determined based on the best available information, including monitored emissions, if available, or reported emissions of the relevant pollutant(s) at the time of the audit.

GHG Credit Accounting and Trading Program for EITE Stationary Sources

§ 25-7-105(1)(f)(I)(C), C.R.S., defines "trading program" as "a commission-adopted regulatory program that allows for regulated sources to meet their greenhouse gas compliance obligations under subsection (1)(e) of this section through the creation, purchase, acquisition, or exchange of, or other commercial-type transaction involving, a GHG credit with other regulated sources." § 25-7-105(1)(f)(I)(A), C.R.S., defines "regulated source" as "a source of [GHG] that is subject to a rule adopted by the [C]ommission under [§ 25-7-105(1)(e)] that imposes specific and quantifiable [GHG] reduction obligations upon that source or group of sources."

An accounting and "trading program" for GHG credits will be developed by the Division, which can be utilized by EITE sources covered by GEMM. The trading program will serve as one pathway to complying with GHG emissions limitations and will allow trading of GHG reductions while also ensuring co-benefits of reducing localized harmful air pollutants at the EITE sources. This is achieved by separately determining what reductions in harmful air pollutants will be achieved at the source through the use of GHG BAECT and requiring that these emission reductions are achieved regardless of how the EITE complies to reduce its GHG emissions.

GHG credits issued by the Division will serve as the mechanism for the trading program. These GHG credits must be utilized for the trading program and represent a GHG emission reduction of one metric ton of CO2e in Colorado, and be real, additional, quantifiable, permanent, verifiable and enforceable. The Act authorizes the Commission to adopt this program through its general rulemaking authority, its authority to adopt implementing rules for GHG pollution reduction, and specific authority to adopt an accounting and trading program as established under House Bill 21-1266.*See* §§ 25-7-106(1) (granting the Commission "maximum flexibility in developing an effective air quality control program and [the authority to] promulgate such combination of regulations as may be necessary or desirable to carry out that program"); -105(1)(e)(II) (granting the Commission broad authority to adopt implementing rules to affect GHG emissions reductions); -105(1)(e)(V) (implementing rules for GHG reductions should enhance cost-effectiveness and compliance flexibility and transparency around compliance costs); -105(1)(e)(IX)(A) (EITE sources should be provided "a pathway to obtain equivalent lower-cost emission reductions at other regulated sources to satisfy their compliance objectives"); and -105(1)(f) (granting the Commission authority to establish GHG credit trading between "regulated sources," and specifically to implement § 25-7-105(1)(e)(IX)).

The program accords with the Commission's authority by allowing EITE sources pathways to accomplish reduction requirements at other regulated sources using an accounting and trading program through which the Division can track emission reductions and trades, prevent double-counting of GHG emission reductions, and identify EITE sources that adversely affect disproportionately impacted communities through emissions of locally harmful air pollutants. Importantly, the accounting and trading program applies only to EITE stationary sources subject to the audit and GHG emission reductions in GEMM.

However, given the authority granted to the Commission in § 25-7-105(1)(f), it is possible that this program may serve as a model for a future, more broadly applicable GHG credit trading for the industrial manufacturing sector. Should that arise, the Commission may consider how EITE sources should be incorporated into the broader program at that time. The current approach recognizes the directive in statute that EITE sources be provided "a pathway to obtain equivalent lower-cost emission reductions at other regulated sources to satisfy their compliance obligations" while also recognizing EITE sources would initially be the only "regulated sources" as that term is defined, and therefore the only sources eligible to participate in the trading program until additional GHG sources in Colorado meet this definition.

Based on these tenets, Section II.I. sets out provisions establishing an accounting system to track GHG reduction credits. These provisions task the Division with establishing the accounting system. An EITE source seeking eligibility to trade credits must first apply and have the Division create a compliance account for the EITE source. This application for an account must be submitted to the Division within 30 days after approval of the EITE source's BAECT and Energy BMP determination. Any EITE source the Division determines adversely affects disproportionately impacted communities through emission of locally harmful air pollutants must be identified by the Division in the accounting system.

Only GHG credits meeting the definition set forth in Section II.B.22 may be traded in the accounting system. Pursuant to this definition a "GHG credit" represents a GHG emission reduction of one metric ton of CO2e that is real, additional, quantifiable, permanent, verifiable and enforceable. To track such credits, the Division is directed to assign each credit a unique identifier (such as a serial number) and, as further directed in Section II.F.1.a.(ii), only issued in the tracking system after the underlying emission reduction has been demonstrated.

Sections II.G. and II.H. are designed to ensure that EITE stationary sources conduct regular reporting to demonstrate compliance with the audit requirements in Section II.C. and emissions reduction requirements in Section II.F. and maintain all pertinent records. The Commission determined that the audit procedures and compliance requirements set out in Part B, Section II, establish the criteria by which the Commission can determine, on a five-year basis, whether EITE stationary sources are employing GHG BAECT and energy BMP. The Commission has determined the audit process is cost-effective and reasonable to achieve these ends.

Additional Considerations

The following are additional findings of the Commission made in accordance with the Act:

§ *25-7-110.5(5)(b), C.R.S.*

As these revisions exceed and may differ from the federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), C.R.S., the Commission determines:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

EITE Entities are required to report GHG emissions under existing federal regulations. Some EITE stationary sources may be required to conduct a GHG "best available control technology" or "BACT" analysis as part of a Prevention of Significant Deterioration permitting action unrelated to the requirements of these rules. However, there are no current federal regulations requiring these entities to conduct GHG BAECT and energy audits or to reduce GHG emissions as required under this rule.

(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;

EITE Entities are required to report GHG emissions under existing federal and state regulations. Some EITE stationary sources may be required to conduct a GHG "best available control technology" or "BACT" analysis as part of a Prevention of Significant Deterioration permitting action unrelated to the requirements of these rules. Those BACT evaluations are technology-based. However, there are no current federal regulations requiring these entities to conduct GHG BAECT and energy audits or reduce GHG emissions as required under this rule.

(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;

Federal BACT analyses under PSD permitting are separate and distinct from the GHG BAECT analysis adopted in this Part B, Section II. in both its scope and purpose. Under federal PSD permitting, GHG emissions cannot alone trigger a BACT analysis, though the permitting authority may evaluate GHG controls for "anyway" sources that trigger PSD permitting requirements by exceeding other criteria pollutant thresholds. *See Air Regul. Grp. v. E.P.A*., 573 U.S. 302, 333–34 (2014). This Part B, Section II. in contrast is adopted pursuant to specific legislative directive to evaluate GHG BAECT and Energy BMPs; there are no applicable federal requirements in this regard.

(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost-effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;

This section gives meaningful effect to §§ 25-7-105(1)(e)(IX) and (XIII), C.R.S., and provides regulated entities flexibility to identify and cost-effectively employ emissions control technologies BAECT and energy efficiency measures to reduce GHG emissions so long as they constitute GHG BAECT and Energy BMPs. Regulated entities that demonstrate effective employment of BAECT and Energy BMPs are afforded certainty with respect to direct non-administrative costs associated with ninety-five percent of the source's GHG emissions and control over the means of otherwise reducing GHG emissions to comply with § 25-7-105(1)(e)(XIII)(B), C.R.S.

(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirements;

There are no applicable federal requirements that create any timing issues. Part B, Section II. allows regulated entities a reasonable time to comply with the audit, any resulting compliance action plan, and GHG emission reduction requirements and allows opportunities for alternative compliance.

(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;

Part B, Section II. affords regulated entities significant flexibility for meeting GHG emission reduction requirements. Furthermore, EITE entities are afforded the ability to affect required reductions through alternative compliance measures where needed. As such, regulated entities are afforded a reasonable margin for accommodation of uncertainty and future growth. The three pathways provided for EITE stationary sources to accomplish the 5% emissions reductions in Sections II.E. and II.F. and as required under § 25-7-105(1)(e)(XII)(B), C.R.S., provide affected sources flexibility to accommodate uncertainty and future growth.

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

All qualifying EITE entities are equally subject to the audit and action plan requirements and the audits account for the specifics of the EITE stationary source in question. Likewise, all regulated entities are afforded opportunities to select and apply BAECT and energy BMPs that work for the specific source and account for environmental, economic, and energy concerns. Furthermore, the five percent GHG emission reduction requirements in Sections II.E. and II.F. are equally applied to all qualifying EITE stationary sources. Where available, opportunities to maximize co-benefits to communities near or around the stationary source should be prioritized.

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

The General Assembly has acknowledged that climate change impacts Colorado's economy and directed that GHG emissions should be reduced across all sectors of our economy. Colorado has established specific GHG reduction goals. Reductions not achieved in one sector will require measures in other sectors of the economy to achieve the state's GHG reduction goals.

However, the General Assembly further provided requirements that energy-intensive and trade-exposed entities demonstrate use of BAECT and energy BMPs through an audit process and limited the Commission's ability to impose additional reductions on at least ninety-five percent of the source's GHG emissions where such measures are effectively employed. See § 25-7-105(1)(e)(IX), C.R.S. With respect to the 5 percent emission reductions required of EITE entities employing GHG BAECT and energy BMPs under § 25-7-105(1)(e)(XIII)(B), C.R.S., any emission reductions not timely realized from these entities would, in turn, require greater emission reductions from other sources in the industrial and manufacturing sector in order to achieve the twenty percent sector-wide requirements by 2030 set forth in § 25-7-105(1)(e)(XIII)(A), C.R.S.

(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;

Part B, Section II. gives effect to the General Assembly's adoption of 25-7-105(1)(e)(IX), C.R.S., which includes a requirement for energy-intensive trade-exposed entities to execute energy and emission control audits that are not required under federal regulations. This is a compelling reason, as these audits will inform the state's strategies and future regulations to accomplish the statewide GHG pollution reduction goals and address the impacts of climate change set forth in § 25-7-102(2), C.R.S. and sector-specific emission reductions under § 25-7-105(1)(e)(XIII), C.R.S.

(X) Whether demonstrated technology is available to comply with the proposed requirement;

Part B, Section II. does not require the use of any specific technology but instead serves as a mechanism to evaluate the control technologies and energy efficiency practices regulated entities are employing and to determine the effectiveness of those measures already in use. The GHG BAECT and Energy BMP audits are used to conduct this evaluation and must include analyses of, but not necessarily implementation of, transformative technologies. All GHG BAECT and energy BMP determinations will be based on demonstrated and available technologies.

(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain;

This rule will enable the Commission to determine whether EITE stationary sources are employing GHG BAECT and Energy BMPs to effectively minimize GHG emissions from regulated facilities. EITE sources will be required to comply with the annual emission limits established pursuant to this audit process. The GHG emissions reductions from this rule are expected to help Colorado achieve the statewide GHG pollution reduction goals in § 25-7-102(2)(g), C.R.S., and the sector-specific GHG emission reductions set forth in § 25-7-105(1)(e)(XIII), C.R.S. Anticipated reductions in co-pollutants are expected to have positive health benefits for the people of Colorado.

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

This rule implements the statutory requirements of §§ 25-7-105(1)(e)(IX) and (XIII)(B), C.R.S. Alternatives exist for how to accomplish these requirements, including different emission thresholds for qualifying entities, different standards for evaluating GHG BAECT and Energy BMPs, and the provision of no or differing means of alternative compliance as well as different timing requirements for emission reductions. The Commission determined that Part B, Section II. appropriately gives effect to the statutory requirements and is consistent with the statewide and sector-specific GHG pollution reduction goals. A no-action alternative is not available under § 25-7-105(1)(e), C.R.S.

Findings of Fact

To the extent that § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based on reasonably available, validated, reviewed, and sound scientific methodologies and all validated, reviewed, and sound scientific methodologies and information made available by interested parties has been considered.

(II) Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in GHG pollution and co-pollutants and will enable the Commission to satisfy the requirements of §§ 25-7-102, -105(1)(e), -106, and/or -109, C.R.S., as applicable.

(III) Evidence in the record supports the finding that the rule shall bring about reductions in risks to human health and the environment that will justify the costs to government, the regulated community, and to the public to implement and comply with the rule.

(IV) The rules are the most cost-effective to achieve the necessary and desired results and reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

II. Adopted: July 21, 2022

(Removed from Regulation Number 22 and placed in Regulation Number 27 April 20, 2023)

Revisions to Regulation Number 22, Part B, Sections II.B.19. and II.B.25.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103, C.R.S., et seq., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5, C.R.S., and the Air Quality Control Commission's (Commission) Procedural Rules.

Basis

The Commission has incorporated by reference Regulation Number 22, Greenhouse Gas Emissions and Energy Management for Manufacturing in Colorado, Part B, Section II.B.19. and Part B, Section II.B.25. These sections shall be modified for the limited purpose of removing the incorporation by reference sentence in Part B, Section II.B.19. and Part B, Section II.B.25. This correction does not change or alter the requirements of the existing rule.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, §§ 25-7-105(1)(b) and 25-7-109, C.R.S. authorize the Commission to adopt emission control regulations, including emission control regulations relating to new stationary sources, for the development of an effective air quality control program.

Purpose

Updating citation references of 40 C.F.R. Part 60 allows the Division to implement and enforce the Emission Guidelines and Compliance Times for applicable source categories. Adoption of the rules will not impose additional requirements upon sources beyond the minimum required by federal law and may benefit the regulated community by providing sources with up-to-date information and regulatory certainty.

III. Adopted: April 20, 2023

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-101, C.R.S., et seq., the Colorado Air Pollution Prevention and Control Act, § 25-7-101, C.R.S., et seq., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 C.C.R. §1001-1.

Basis

To improve the readability and usability of Regulation Number 7 and Regulation Number 22, the Commission adopted revisions restructuring and reorganizing the parts and sections.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-101, C.R.S., et seq. (the State Air Act or the Act), specifically § 25-7-103.3, directs rule-making agencies, such as the Commission, to review their rules and consider whether the rule is necessary; whether the rule overlaps or duplicates other rules of the agency or with other federal, state, or local government rules; whether the rule is written in plain language and is easy to understand; whether the rule has achieved the desired intent and whether more or less regulation is necessary; whether the rule can be amended to give more flexibility, reduce regulatory burdens, or reduce unnecessary paperwork or steps while maintaining its benefits; whether the rule is implemented in an efficient and effective manner, including the requirements for the issuance of permits and licenses; whether a cost-benefit analysis was performed by the applicable rule-making agency; and whether the rule is adequate for the protection of the safety, health, and welfare of the state or its residents. Based on this review, the rule-making agency will determine whether the existing rules should be continued in their current form, amended, or repealed.

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 27.

The Commission reorganized Regulation Number 7 into four regulations: Part B became Regulation Number 24; Part C became Regulation Number 25; Part D remained in Regulation Number 7; and Part E became Regulation Number 26. The upstream oil and gas intensity and midstream combustion program provisions currently in Regulation Number 22 moved to Regulation Number 7. The manufacturing sector greenhouse gas provisions in Regulation Number 22 became a new Regulation Number 27.

The Commission also made typographical, grammatical, and formatting corrections throughout the regulations.

Incorporation by Reference

The Commission will update regulatory references as needed as opportunities arrive.

Additional Considerations

These revisions are administrative in nature and, therefore, do not exceed or differ from the requirement of the federal act or rules. Therefore, § 25-7-110.5(5)(a) does not apply.

Findings of Fact

To the extent that § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of greenhouse gas and VOC emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective alternative to achieve the necessary reduction in air pollution and provide the regulated entity flexibility.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

IV. Adopted: October 20, 2023

Revisions to and reorganization of Regulation Number 27.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and -110.5, C.R.S., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 C.C.R. §1001-1.

Basis

In House Bill 19-1261, now codified in part at §§ 25-7-102(2) and -105(1)(e), C.R.S., the General Assembly declared that "[c]limate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life[,]" acknowledged that "Colorado is already experiencing harmful climate impacts[,]" and acknowledged that "[m]any of these impacts disproportionately affect" certain disadvantaged communities. § 25-7-102(2), C.R.S. The General Assembly also recognized that "[b]y reducing greenhouse gas pollution, Colorado will also reduce other harmful air pollutants, which will, in turn, improve public health, reduce health care costs, improve air quality, and help sustain the environment." § 25-7-102(2)(d), C.R.S. Consequently, the General Assembly updated Colorado's statewide greenhouse gas (GHG) pollution reduction goals so as to achieve a 26% reduction of statewide GHG by 2025; 50% reduction by 2030; 65% reduction by 2035; 75% reduction by 2040; 90% reduction by 2045; and 100% reduction by 2050, as compared to 2005 levels. Senate Bill 2023-16, 74th Gen. Assemb., 1st Reg. Sess., Sec. 8 (Colo. 2023) (amending § 25-7-102(2)(g), C.R.S.).

In 2021, Colorado's legislature adopted House Bill 21-1266 (the Environmental Justice Act), now codified in part at § 25-7-105(1)(e), C.R.S. This provision grants the Commission broad authority to regulate GHG emissions to accomplish the goals established in § 25-7-102(2)(g), C.R.S. It directs the Commission to adopt rules that reduce statewide GHG emissions from the industrial and manufacturing sector by 2030 by at least 20% below the 2015 baseline, according to the Colorado State GHG Inventory. The rules must include protections for disproportionately impacted communities and prioritize emission reductions that will reduce emissions of co-pollutants that adversely affect disproportionately impacted communities. The rules must also be designed to accelerate near-term reductions and secure meaningful emission reductions from the industrial and manufacturing sector to be realized no later than September 30, 2024. The Commission adopted requirements for certain energy-intensive, trade-exposed (EITE) manufacturing stationary sources in October 2021 (GEMM 1) and then adopted requirements for additional stationary sources in the manufacturing sector in September 2023 (GEMM 2).

The Commission also restructured the regulation into the following Parts: Part A, General Provisions (fka Part A, Sections I., II., X., and XI.); Part B, GEMM 2 Facility Requirements (new); Part C, Energy-Intensive Trade-Exposed Stationary Source Requirements (fka Part B, Sections III. through IX.); and Part D, Greenhouse Gas Credit Trading Requirements (fka Part B, Section IX.).

Specific Statutory Authority

The Act, specifically § 25-7-105(1), C.R.S., directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102, C.R.S., and that are necessary for the proper implementation and administration of the Act.

Section 25-7-105(1)(e), C.R.S., authorizes the Commission to promulgate implementing rules and regulations consistent with the statewide GHG pollution reduction goals in § 25-7-102(2)(g), C.R.S. In adopting GHG abatement strategies and implementing rules, the Commission is authorized to take into account other relevant laws and rules, as well as voluntary actions of local communities and the private sector, to enhance efficiency and cost-effectiveness, and to solicit input from other state agencies and stakeholders on the advantages of different statewide GHG pollution mitigation measures. § 25-7-105(1)(e)(II) and (IV), C.R.S.

Implementing rules may include regulatory strategies that incentivize development of renewable resources and "enhance cost-effectiveness, compliance flexibility, and transparency around compliance costs." § 25-7-105(1)(e)(V), C.R.S. Further, in promulgating such implementing rules, the Commission is to consider many factors, including, but not limited to: health, environmental, and air quality benefits and costs; the costs of and time necessary for compliance; the relative contribution of each source or source category to statewide GHG pollution; equitable distribution of the benefits of compliance; issues related to the beneficial use of electricity to reduce GHG emissions; and whether greater or more cost-effective emission reductions are available through program design. § 25-7-105(1)(e)(VI), C.R.S.

§ 25-7-106, C.R.S., provides the Commission "maximum flexibility in developing an effective air quality program and [promulgating] such [a] combination of regulations as may be necessary or desirable to carry out that program." Section 25-7-109(1), C.R.S., authorizes the Commission to adopt and promulgate emission control regulations that require the use of effective practical air pollution controls for each type of facility, process, or activity which produces or might produce significant emissions of air pollutants. An "emission control regulation" may include "any regulation which by its terms is applicable to a specified type of facility, process, or activity for the purpose of controlling the extent, degree, or nature of pollution emitted from such type of facility, process, or activity. . . ." § 25-7-103(11), C.R.S. Emission control regulations may pertain to any chemical compound including GHG pollution. *See* § 25-7-109(2)(c), C.R.S.

§§ 25-7-105(1)(b) and 25-7-109, C.R.S. authorize the Commission to adopt emission control regulations, including emission control regulations relating to new stationary sources, for the development of an effective air quality control program.

Purpose

In 2021, the Commission adopted Regulation Number 27, which established requirements for certain EITE manufacturing stationary sources (GEMM 1). The Commission then revised Regulation Number 27 to require GHG emission reductions from additional stationary sources that emit equal to or greater than 25,000 metric tons of CO2e (GEMM 2). The Commission also aligned the applicability threshold for GEMM 1 facilities with the applicability threshold for GEMM 2 facilities, from 50,000 metric tons of CO2e to 25,000 metric tons of CO2e, to allow for consistency in the regulatory approach.

GEMM 2 Facilities

As of the effective date of the rule, the GEMM 2 requirements set out in Part B impact 18 facilities (covered GEMM 2 facilities) and are intended to achieve a reduction in the cumulative direct GHG emissions from the covered GEMM 2 facilities of almost 12% by 2024 and 20% by 2030, relative to 2015 levels. The rule also applies to any other manufacturing facilities that exist as of the effective date of the rule and emit equal to or greater than 25,000 metric tons of CO2e in any year following the effective date of the rule. Apart from facilities subject to GEMM 1, the facilities covered by this rule are the manufacturing sources with the largest annual direct GHG emissions in the State. The facilities are defined as manufacturing operations by the North American Industrial Coding System, and have processes at their facilities that include the mechanical, physical, or chemical transformation of materials, substances, or components into new products. With one exception, the 18 covered GEMM 2 facilities are not considered EITE sources.

Covered GEMM 2 Facilities GHG Reductions

The Commission adopted requirements for covered GEMM 2 facilities to achieve onsite GHG reductions from their baseline emissions through technically feasible and economically reasonable reduction measures such as equipment upgrades, increasing efficiency, and installation of additional controls. Onsite carbon capture and storage (CCS) is another potential reduction measure pending the Division establishing or adopting by reference a standardized CCS protocol(s).

For covered GEMM 2 facilities, baseline emissions were established as the higher of the facility's 2021 or 2022 GHG emissions, subject to certain revisions to correct previous inaccuracies and certain production capacity-related adjustments. Facilities that had increased production capacity between 2015 and 2021 by more than 30%, but which had not yet realized all of the additional production capacity through actual production, were eligible for baseline adjustments as set forth below. The adjustment depended on the size of the production increase, the year(s) in which the expansion occurred, production levels after the expansion, and the GHG emissions increase estimated from the expansion. All facilities were granted 75% of their requested GHG emissions increase, except for facilities which, as of rule adoption, have already achieved a 20% reduction compared to 2015, which were granted 100% of their requested GHG emissions increase.

Although subject to change to correct prior data or reporting inaccuracies, as of the date of rule adoption, the higher of 2021 or 2022 reported GHG emissions and the baselines of the covered GEMM 2 facilities are shown below in Table 1. The figures in Table 1 rely on the 100-year global warming potentials published in the Fifth Assessment Report (AR5) from the Intergovernmental Panel on Climate Change Working Group 1 (see IPCC, Fifth Assessment Report, https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_Chapter08_FINAL.pdf).

TABLE 1

Facility Name	GEMM 2 facility GHG emissions: Higher of 2021 or 2022 year (metric tons of CO2e using AR5 GWP values)	GEMM 2 facility GHG baseline emissions (metric tons of CO2e using AR5 GWP values)
American Gypsum Company	75,047	75,047
Anheuser Busch Inc., Fort Collins Brewery	43,710	43,710
Avago Technologies	125,339	125,339
Carestream Health, Inc.	34,894	34,894
Cargill Meat Solutions	39,588	39,588
Front Range Energy	41,312	60,369
Golden Aluminum Inc.	26,759	26,759
JBS Swift Beef Company - Greeley Plant	171,101	171,101
Leprino Foods, Greeley	97,816	132,878
Microchip Technology	168,907	168,907
Molson Coors USA LLC - Golden Brewery	234,938	234,938
Natural Soda	49,309	56,227
Owen-Brockway Glass Container Plant	116,002	116,002
Rocky Mountain Bottle Company	76,684	76,684
Sterling Ethanol, LLC	56,370	56,370
Suncor Energy USA, Commerce City	951,898	951,898
Western Sugar Cooperative	81,981	109,141
Yuma Ethanol, LLC	55,500	55,500

In establishing the GHG reduction criteria set forth in Part B, Section I.A., the Commission considered each covered GEMM 2 facility's GHG reductions since 2015 and their contribution in terms of percent GHG emissions towards the cumulative emissions from the 18 covered GEMM 2 facilities. The resulting percent reduction requirements are reflected in Section I.A. of Part B. The primary driver for requiring an individual facility to reduce a certain amount was how much the facility had already reduced GHG emissions since 2015. The reductions achieved by each facility between 2015 and the facility's higher reported emissions in 2021/2022 varied widely; some covered GEMM 2 facilities had reduced well over 20%, while others had increased emissions by over 100%, and many of the facilities were somewhere in between.

The rule assigned tiered reduction requirements based on the facilities' achieved reductions in an equitable manner. As reflected in Tables 1 through 4 of Part B, those facilities that had achieved significant GHG emission reductions since 2015 were assigned a lesser 2030 reduction obligation than those that had reduced emissions by less than 20% or had increased emissions. This struck a balance that will enable the group as a whole to achieve a 20% reduction by 2030, while requiring all facilities to be on a downward GHG emission trajectory. As reflected in Table 5, facilities that are the larger emitters in the group were assigned an additional percentage of reduction required, depending on their contribution to the group's cumulative emissions. This approach was justified because a minimal decrease in reduction obligation for the higher emitters would have created a significant increase on the required reductions of smaller emitting facilities.

Further, facilities with larger emissions tend to have more opportunities to reduce GHG emissions than smaller facilities. Oftentimes facilities with larger emissions have multiple, varied emission sources for which the facility can analyze for reduction opportunities through, for example, efficiencies and technology improvements. The reductions in Section I.A. were calculated based on the higher of each facility's 2021/2022 emissions and did not consider any baseline adjustment granted to any facility.

Additionally, as set forth in Part B, Sections I.A.1. through I.A.4., the Commission determined that each covered GEMM 2 facility would be limited to its baseline emissions (subject to an exception described below) or required to reduce an additional amount, between 1.25% and 1.75% below its baseline, beginning in 2024. Again, the degree of any reduction required depended on how much, if at all, the facility had already reduced emissions since 2015. The purpose of this requirement was to satisfy the Commission's statutory obligation to design GHG reduction rules that "accelerate near-term reductions" and "secure meaningful reductions" from the industrial and manufacturing sector "to be realized beginning no later than September 30, 2024." § 25-7-105(1)(e)(XIII), C.R.S.

Applying the requirements established in Part B, Section I to the covered GEMM 2 facilities, the Commission determined the resulting emission reduction obligations as shown in Table 2.

TABLE 2

Facility Name	2024–2029 GHG emissions reduction requirement vs. facility baseline (%)	2030 GHG emissions reduction requirement vs. facility baseline (%)
American Gypsum Company	1.75%	12.5%
Anheuser Busch Inc., Fort Collins Brewery	1.25%	7%
Avago Technologies	0.00%	4%
Carestream Health, Inc.	1.75%	12.5%
Cargill Meat Solutions	1.75%	12.5%
Front Range Energy	1.75%	12.5%
Golden Aluminum Inc.	1.50%	8%
JBS Swift Beef Company, Greeley	1.75%	15.5%
Leprino Foods, Greeley	1.75%	12.5%
Microchip Technology	0.00%	4%
Molson Coors USA LLC, Golden	0.00%	4%
Natural Soda	1.50%	8%
Owen-Brockway Glass Container Plant	1.75%	12.5%
Rocky Mountain Bottle Company	1.25%	7%
Sterling Ethanol, LLC	1.75%	12.5%
Suncor Energy USA, Commerce City	1.50%	14%
Western Sugar Cooperative	0.00%	1%
Yuma Ethanol	1.75%	12.5%

Notwithstanding the above, the Commission recognized that some facilities have made significant reductions in mass-based, direct GHG emissions since 2015. Considering this, and to provide near-term flexibility for those specific facilities, the Commission allowed facilities that have already reduced emissions by 20% or more since 2015 to emit up to 75% of the individual facility's reported 2015 emissions through the year 2025, as long as the facility returns to its GEMM 2 facility baseline emissions in 2026. If a facility continues to emit above its GEMM 2 facility baseline emissions beyond 2025, the facility's 2030 requirement will be increased by an amount depending on the amount of time the facility emits beyond the GEMM 2 GHG baseline emissions. This ensures any excess emissions past 2025 are mitigated and displaced in 2030 and beyond, eventually achieving a greater cumulative reduction over time.

Pursuant to Part B, Section III.B, covered GEMM 2 facilities that are unable to achieve the required GHG reductions through onsite measures can comply by retiring GHG credits. GEMM 2 facilities may generate GHG credits by reducing GHG emissions below a facility's 2030 GHG reduction requirement including, beginning in 2031, through direct air capture projects, or may purchase GHG credits from other facilities.

Part B, Section I.B of the rule applies separate requirements to existing facilities that report direct GHG emissions of equal to or greater than 25,000 metric tons of CO2e after the effective date of the rule. This includes any EITE subject to the rule that exceeds the lowered 25,000 metric tons of CO2e threshold which elects to comply with Regulation Number 27 through Part B, rather than through Part C. As of the effective date of the rule, there was one EITE facility in Colorado, Golden Aluminum Inc., in this situation. Golden Aluminum will be subject to the requirements established in Part B, Section I.A., unless it elects to comply with Regulation Number 27 through Part C. The historical emissions of this facility are known and were included in the calculations for the covered GEMM 2 facilities in the development of the GEMM 2 GHG emission reduction requirements. The GEMM 2 regulation has been drafted to assure covered GEMM 2 facilities achieve a 20% reduction in GHG emissions compared to 2015 whether Golden Aluminum chooses to comply with Regulation Number 27 through Part B or Part C.

Carbon Capture and Storage

Under Part B, Section III.A.1, a GEMM 2 facility may account for direct emission reductions from a carbon capture and storage system (CCS), with capture of CO2 performed onsite at the GEMM 2 facility, for purposes of compliance with the facility's GEMM 2 annual GHG reduction requirement in any year. However, prior to using reductions from such systems towards a facility's compliance, the Division must approve a protocol applicable to such systems. The Division assessed three published protocols and one draft protocol, along with two sets of accounting methodologies, related to CCS.

The three published protocols were issued by the American Carbon Registry (see American Carbon Registry, Carbon Capture and Storage Projects, https://americancarbonregistry.org/carbon-accounting/standards-methodologies/carbon-capture-and-storage-in-oil-and-gas-reservoirs), the California Air Resource Board (see California Air Resources Board, Carbon Sequestration: Carbon Capture, Removal, Utilization, and Storage, https://ww2.arb.ca.gov/our-work/programs/carbon-sequestration-carbon-capture-removal-utilization-and-storage), and the Government of Alberta, Canada (see Alberta Government, Quantification protocol for CO2 capture and permanent storage in deep saline aquifers, https://open.alberta.ca/publications/9780778572213).

The one draft protocol was issued by the Verified Carbon Standard (see Verified Carbon Standard, Draft Methodology for Carbon Capture and Storage, https://verra.org/wp-content/uploads/2023/06/CCS-Methodology-Public-Consultation-Draft.pdf).

The two accounting methodologies were the 2006 IPCC Guidelines (see 2006 IPC Guidelines, https://www.ipcc-nggip.iges.or.jp/public/2006gl/pdf/2_Volume2/V2_5_Ch5_CCS.pdf) and 40 CFR, Part 98 (Part 98). Additionally, the Division assessed the 2005 IPCC Special Report on CCS (see IPCC, Carbon Dioxide Capture and Storage, https://www.ipcc.ch/report/carbon-dioxide-capture-and-storage/).

Although certain of these protocols and methodologies showed promise for use in the context of the Commission's GHG reduction rules, as of the date of rule adoption, there was no existing published protocol that could be adopted by reference, and no single accounting methodology that could be referenced, for such use.

As such, the Commission directs the Division to establish or adopt by reference a standardized CCS protocol or protocols in consultation with interested stakeholders and consistent with the CCUS Task Force Subcommittee Recommendations. Any such protocol(s) must include, without limitation, the following requirements:

1. CO2 must be captured onsite at a GEMM 2 facility. The protocol should reflect that as long as the carbon capture is taking place onsite, the storage/sequestration need not also take place onsite.

2. CO2 captured need not be from a combustion or process emission source category as defined by 40 CFR, Part 98.

3. Sequestered Biogenic CO2 shall be counted as a negative emission.

4. Only permanent geologic sequestration in a UIC Class VI well, or other forms of permanent sequestration is permitted.

5. CO2 captured by a GEMM 2 facility must either remain in the custody of the facility or custody transfers must be detailed to an extent permitting the complete traceability from the point of capture to the point of permanent sequestration as set forth in the protocol.

6. The GEMM 2 facility shall be responsible for compiling and reporting all onsite emissions as well as all direct Scope 1 emissions attributable to the capture, conditioning, transport, and storage of CO2 regardless of whether those emissions were incurred by any downstream entity(ies).

7. Any GHG credits issued for CCS will be equal to the total annual metric tons of CO2 sequestered in subsurface geologic formations at the facility in the reporting year as calculated using Equation RR-12 of Subpart RR of 40 CFR, Part 98, or comparable methodology, minus the total mass of emissions, in CO2 equivalents, incurred in the capture, conditioning, and transport of the CO2 from the capture facility through to the receiving flow meter at the sequestration well or site that would not have occurred in the absence of the project. Emission sources and respective accounting approaches that must be accounted for include, without limitation:

7.1. Greenhouse gas emissions resulting from the combustion of fossil fuels for the powering of stationary equipment used in the capture, and transport via pipeline of CO2, shall be reported per Subpart C of 40 CFR, Part 98, or per a comparable methodology.

7.2 Excluding the CO2 captured or transported for the purpose of sequestration, greenhouse gas emissions resulting from leaks, vents and flares from stationary equipment of GHGs other than the CO2 captured or transported for the purpose of sequestration shall be reported per Subpart W of 40 CFR, Part 98, or per a comparable methodology.

7.3 Greenhouse gas emissions resulting from vehicle transportation for the delivery of CO2 via containers from a GEMM 2 capture facility to a well shall be accounted for by tracking fuel use attributed to that transportation for both pick-up and delivery of the CO2 and applying the appropriate emission factor for the fuel type as found in Table MM-1 or Table MM-2 of Subpart MM of 40 CFR, Part 98, or a comparable appropriate emission factor.

State-Managed GHG Reduction Fund

The Commission directs the Division to propose establishment of a state-managed fund to receive and allocate monies to finance projects to reduce GHG emissions from the industrial and manufacturing sector by no later than September 2025, and to ask the Commission to hold a rulemaking hearing to establish this fund, the hearing to be held no later than December 2025. This state-managed fund could serve as a compliance option for any GEMM 2 facility unable to comply by other means laid out in the rule, allowing the facility to instead pay fees to this fund on a per metric ton of CO2e basis up to the amount required to achieve the facility's reduction requirement for that year. The Commission expects that fees would need to be set above any regulatory price cap for onsite reductions. The purpose of the fund should be to finance projects at other industrial or manufacturing sites located within Disproportionately Impacted Communities, or finance otherwise cost-prohibitive onsite reduction projects within the group of regulated entities in the industrial and manufacturing sector. The reduction projects funded should be prioritized by considering both the GHG reductions and co-pollutant reductions estimated from each project, and prioritized within communities surrounding the GEMM 2 facilities that have the highest EnviroScreen scores to ensure the projects are occurring in the most vulnerable communities.

GHG Reduction Plan

As established in Part B, Section II.A., by September 30, 2025, each covered GEMM 2 facility (except for glass manufacturing facilities) must develop a GHG reduction plan showing how the facility will achieve the required GHG reductions and how co-pollutant emission reductions were considered and prioritized in accordance with the rule. For glass manufacturing facilities, the GHG reduction plans are due by June 1, 2027. The facility will be required to implement the portfolio of onsite measures with an average cost equal to or below the 2030 social cost of GHGs (as established in the Federal Interagency Working Group's February 2021 report on the Social Cost of Greenhouse Gases), which achieves the greatest reduction in harmful air pollution, up to the facility's 2030 GHG emission requirement before it may use the credit system to comply with the rule. The average cost is determined by dividing total cost of the portfolio by the total emission reduction. The 2030 social cost of GHG values are, for carbon dioxide, $89 per metric ton of carbon dioxide; for methane, $2,500 per metric ton of methane; and for nitrous oxide, $33,000 per metric ton of nitrous oxide, with other GHGs converted to CO2e. To determine whether a portfolio of measures exceeds this cost, facilities are required to show that the cost of implementing the portfolio of measures, over the lifetime of the equipment involved, will have an average cost of more than the 2030 social cost of the respective GHG gases abated.

The Commission determined that the 2030 social cost of GHGs is an appropriate regulatory price cap for requiring onsite measures through a portfolio approach. The social cost of GHGs, however, is not intended to be a price above which the Commission considers GHG emission reduction measures to be cost-prohibitive nor as a ceiling above which facilities should not implement GHG emission reduction measures that are cost-effective for those facilities, as cost-effectiveness varies for each facility. A portfolio of measures may require inclusion of individual measures above this cost, where the average cost of the portfolio remains equal to or less than the 2030 social cost of GHGs. The 2030 social cost of GHGs was considered an appropriate average cost because the social cost of GHGs, as defined in the Act at § 25-7-110.5(4)(f), C.R.S., is a comparative tool that is already established and defined as cost-effective since it is the cost at which the net benefits of GHG emission reduction measures generally outweigh the costs. Using the 2030 social cost of GHGs value additionally aligns with the year the reductions are required to be achieved by the covered GEMM 2 facilities, and the year around which the GHG reduction plan is structured. Above this portfolio cost, the Commission encourages facilities to consider the cost-effectiveness of GHG emissions reductions measures for their individual facilities by requiring facilities to identify and price all technically feasible GHG emission reduction measures and establishing a credit trading program, both which help to create the business case to implement measures above the 2030 social cost of GHGs if they are cost-effective for facilities independently. Requiring facilities to assess the cost of all measures also allows for measures to be assessed for accuracy.

This requirement also allows the Division to collect information on the types and cost of reduction measures that could potentially become cost-effective in the future, or with additional financing through incentives and grant programs and for the independent third party to verify that they are, in fact, accurate. The Commission's approach described above will help to prevent GHG emissions leakage out of state, which is a concern if a facility would otherwise be required to decrease production to comply with Regulation Number 27. The Commission is aware that the social cost of GHG values might be updated upwards by the Federal Interagency Working Group. The Commission asks the Division to monitor any such updates and return to the Commission with a proposal to update the SC-GHG used in the rule for purposes of cost-effectiveness if the SC-GHG is increased by the Federal Interagency Working Group.

In addition to prioritizing onsite GHG reductions, which is expected to result in reductions of harmful air pollution, the rule satisfies the statutory requirement in § 25-7-105(1)(e)(XIII), C.R.S. to include protections for disproportionately impacted communities and prioritize emission reductions that reduce harmful air pollution that adversely affects disproportionately impacted communities through two additional mechanisms set out in Part B, Section II.A.3.a. and Part B, Section II.A.6. In Part B, Section II.A.3.a., the Commission required that facilities must propose to implement the GHG reduction measures with the greater reduction in harmful air pollution for measures that yield GHG emission reductions within 5% of each other and are at or below the 2030 social cost of GHGs. This prioritizes GHG reduction measures that also reduce the greater amount of harmful air pollution for the benefit and protection of disproportionately impacted communities. In Part B, Section II.A.6, the Commission adopted a mechanism by which facilities that use the GHG credit trading system to reach their 2030 GHG emission requirements will be required to "true-up" their onsite reductions of harmful air pollution.

For this process, the Commission adopted a higher regulatory price cap for implementing measures to reduce harmful air pollution because, upon proposing to use the GHG credit trading system, a covered GEMM 2 facility will have already proposed the portfolio of measures up to the 2030 social cost of GHGs and concluded that no additional measures are available under that cost. Therefore, by increasing the regulatory price cap threshold to 50% above the 2030 social cost of GHGs, additional GHG reduction measures that also reduce harmful air pollution that are not included in the facility's portfolio of measures may be identified and used to quantify corresponding harmful air pollution reductions. The calculation of the portfolio cost does not include additional measures identified and included under Part B, Section II.A.6. These requirements were structured to directly address the statutory requirements to provide protections for disproportionately impacted communities and prioritize reductions of harmful air pollution. To allow for a consistent methodology to be used in quantifying and comparing co-pollutant reductions, the Commission directs the Division to publish a guidance document outlining the specific process that should be followed. The guidance document will aid regulated sources as well as third-party reviewers in ensuring a consistent method is used in the development of the GHG reduction plans.

Under Part B, Sections II.C and II.D, an independent third party must review and certify the facility's GHG reduction plan. Owners and operators of GEMM 2 facilities will pay the full cost of the independent third-party review and certification for their facility. In contrast to the qualified third-party auditor requirements under Part C, Section I.A.3., the independent third party will be contracted by the State of Colorado to assure objectivity and neutrality of the third-party review and certification. Under Part B, Section IV, covered GEMM 2 facilities must also submit annual emission reports by March 31 of each calendar year starting in 2025, and compliance certifications by September 30 for each compliance period starting in 2027. The facility must certify a facility's annual emissions, provide updates on reducing air pollution where located near or in a disproportionately impacted community, and document non-facility achieved GHG reductions (e.g., purchased GHG credits).

When calculating its emissions reduction targets and submitting its annual compliance certification, a GEMM 2 facility may account for a percent of the emissions avoided by utilization of a combined heat and power ("CHP") unit, or cogeneration unit. The Commission recognizes that industrial CHP can provide significant GHG emissions reductions in the near- to mid-term as marginal grid emissions continue to be based on a mix of fossil fuels in Colorado.

Additionally, cogeneration units avoid losses associated with conventional electricity supply, which further reduces fuel use, helps avoid the need for new transmission and distribution infrastructure, and eases grid congestion when demand for electricity is high, particularly here in Colorado. The Commission also notes that in the long-term, consistent with a U.S. Department of Energy "Industrial Decarbonization Roadmap" (Sept. 2022), CHP systems can be retrofitted to use clean fuels, and so it makes little sense to incentivize early shutdown of such systems currently. Therefore, the Commission adopted a provision allowing a GEMM 2 facility with a combined heat and power unit to reduce its GEMM 2 annual GHG emissions requirement in 2024 through 2029, based on the amount of displaced on-site emissions associated with boiler usage, up to 50% of the facility's annual GHG emissions reduction requirement. The Commission intends that credit given for CHP sunset as of December 31, 2029. The Commission intends that the combined heat and power compliance credit will be available only so long as a facility demonstrates its displaced on-site thermal energy emissions based on the six-step formula (below) contained in the Division-approved form that calculates displaced emissions. This ensures that the State achieves both the GEMM 2 specific target and the State's economy-wide target in a more efficient manner by avoiding simply shifting GHG emissions to another industrial sector.

Step 1:	Displaced electricity emissions	D_E	$D_E = (C_P + G_L) \times G_E$ where: C_P = CHP electricity production G_L = Electric grid transmission & distribution loss G_E = Electric grid emission factor
Step 2:	Displaced thermal emissions	D_T	$D_T = C_T / T_P \times T_E$ where: C_T = Utilized CHP thermal output T_P = Displaced thermal production efficiency T_E = Displaced thermal emission factor
Step 3:	Displaced utility emissions	D_U	$D_U = D_E + D_T$ where: D_E = Displaced electricity emissions D_T = Displaced thermal emissions
Step 4:	CHP emissions	C_E	$C_E = C_F + F_E$ where: C_F = CHP fuel consumption F_E = CHP fuel emission factor
Step 5:	Total avoided emissions	A_T	$A_T = D_U – C_E$ where: D_U = Displaced utility emissions C_E = CHP emissions
Step 6:	Direct stationary avoided emissions	A_D	$A_D = D_T / D_U \times A_T$ where: D_T = Displaced thermal emissions D_U = Displaced utility emissions A_T = Total avoided emissions

Transparency

In line with the Commission's commitment to equitable representation and meaningful community engagement, the Commission directs the Division to take the following actions related to transparency in its implementation of Regulation Number 27.

The Division is directed to conduct the public meetings required under Part B, Section II.I. consistent with the spirit of the outreach requirements provided in the Environmental Justice Act including (1) holding multiple meetings at variable times such as weekend, evening, and/or morning sessions; (2) providing at least 30 day public notice before any public input opportunity; (3) disseminating meeting announcements through different methods and community organizations; and (4) hosting meetings in multiple locations, such as urban centers, rural locations. The Division is further directed to gather public input on GHG reduction plans via a variety of methods, including in person, virtual/online, online comment portal/email, and call-in. Colorado residents participating in such public meetings outside of paid employment will be offered participation stipends as an expression of gratitude for their time and child care stipends to promote accessible, meaningful involvement in the process. Such public meetings will be announced in English and Spanish and interpretation will be provided in languages other than English upon request.

Additionally, the Division is directed to post to its website a plain-language description of the contents of the following documents in the top two languages spoken by the communities surrounding each of the GEMM 2 facilities: (1) GHG reduction plans (Part B, Section II.A); (2) annual compliance certifications (Part B, Section IV.A); (3) certifications that a facility will comply with its 2030 requirement in 2025 (Part B, Section I.A.6); (4) records related to compliance with a facility's approved GHG reduction plan (Part B, Section V.A.2); and (5) credit trading program registration applications (Part D, Section II.A.1). The Division will provide translated copies of these documents to members of the public upon request or will provide a meeting with a Division subject-matter expert to review requested document(s) with an interpreter present.

Recordkeeping

Certain submissions required of GEMM 2 facilities may contain confidential business information (CBI). Part B, Section V includes a requirement that any potential CBI submitted by GEMM 2 facilities must be clearly identified and be submitted in a separate, supplementary document. The Commission does not, however, intend that such statements be determinative of whether the information is in fact CBI under Colorado law, but expects that information will be made available as required and permitted by the Colorado Open Records Act.

Greenhouse Gas Credit Trading System

The Commission also expanded upon the GHG accounting and tracking system, as required in § 25-7-105(f)(II), C.R.S, with the GHG credit trading system set out in Part D.

The GHG credit trading system allows "regulated sources" to generate and trade or retire GHG credits as a compliance mechanism for this rule. As "regulated sources," an EITE facility may generate one GHG credit per metric ton of CO_2e reduced beyond its annual emissions limitation in the relevant year which it may trade with other EITE sources. A GEMM 2 facility may generate one GHG credit per metric ton of CO_2e reduced beyond its 2030 GHG emissions requirement in the given year which it may trade with other GEMM 2 facilities. Before allowing trading between EITE and GEMM 2 sources, the Commission directs the Division to engage in a stakeholder process or technical working group to publish guidance by December 1, 2024. Such guidance must ensure that trading between EITE and GEMM 2 sources does not compromise the sector's achievement of the GHG emissions reduction requirement in § 25-7-105(1)(e)(XIII), C.R.S. As with any credit trading market, it is important that this GHG credit trading system ensure that one GHG credit equates to one metric ton of CO_2e reduced to ensure the GHG credits in the market accurately reflect GHG emission reductions.

Because EITE facilities generate GHG credits on an intensity basis, one GHG credit generated by an EITE facility does not always equate to one metric ton of CO2e reduced such that trading between EITE and GEMM 2 generated GHG credits may jeopardize the State's progress towards its climate goals. Therefore, until a framework could be established to prevent jeopardizing the State's progress towards its climate goals, GHG credit trading between EITE and GEMM 2 facilities was restricted until 2025 after the Division published guidance to ensure the sector aligns with its climate targets in § 25-7-105, C.R.S. By ensuring that one metric ton of CO2e reduced is equal to one GHG credit, which a facility can bank for up to three years and can retire or trade as needed, the GHG credit trading system established in Part D was structured to (1) not jeopardize the State's progress towards its climate goals, and (2) allows a facility to retain the full value of one metric ton of CO2e reduced at the facility in the GHG credit trading system.

The GHG credit program also incentivizes near-term emission reductions, as required by the Act, because it allows a facility to retain the full value of one metric ton of CO2e reduced at the facility in the credit market while encouraging facilities to avoid additional costs to purchase GHG credits and creating a profitable business opportunity for facilities that can reduce their emissions beyond their allowances.

In addition, beginning in 2031, GEMM 2 facilities may generate one GHG credit per metric ton of CO2e quantifiably reduced through offsite direct air carbon capture projects. The Commission directs the Division to approve a protocol governing the implementation of such projects. This provision was intended to encourage direct air capture projects that remove carbon from the air, which will help Colorado achieve its climate change mitigation goals. *See* § 25-7-102(2), C.R.S. Any GHG credit generated through a direct air carbon capture project will be scrutinized to ensure that GHG emissions reductions are real, quantifiable, permanent, verifiable, enforceable, and that the ratio of one GHG credit to one metric ton of CO2e reduction is maintained. Offering an additional alternative compliance option for GEMM 2 facilities aligns with the Commission's ability to include regulatory strategies "that enhance cost-effectiveness" and "compliance flexibility" in its rules per § 25-7-105(1)(e)(V), C.R.S. Importantly, this option does not undermine the rule's requirement for the sector to reduce GHG emissions by 20% from 2015 levels because it is available for compliance after facilities are required to initially achieve this level of GHG emission reductions. Nor does it undermine protections for disproportionately impacted communities because it is subject to the rule's requirements that, (1) under Part B, Section II.A.4, facilities implement all onsite reductions up to the 2030 social cost of GHGs before using the GHG credit trading system towards achieving their 2030 reduction requirements, and that (2) facilities using the GHG credit trading system that are located near residential disproportionately impacted communities reduce harmful air pollution under Part B, Section II.A.5.

The GHG credit trading system will be operational and open to EITE and GEMM 2 facilities for GHG credit trading by December 1, 2024. The Commission anticipates that this will be sufficient time for the Division to develop, test, and launch the GHG credit trading system for facilities to utilize GHG credits as a form of compliance beginning in 2025 for the 2024 compliance year. The Division will issue GHG credits annually to align with the annual emissions compliance obligations. Each GHG credit will be uniquely identifiable to assist the Division with tracking GHG credit movement within the system and preventing double-counting of GHG emission reductions. Also to prevent double-counting of GHG emission reductions, the GHG credit trading system will prohibit the transfer or use of GHG credits generated within the system to other external credit trading systems to assure the GHG credits are used and accounted for within Colorado. Finally, unless retired earlier for compliance purposes, all GHG credits will expire three years from the date they are generated. Allowing facilities to hold GHG credits for three years will allow facilities to time the sale of their GHG credits with the market and to generate revenue over time by selling a greater number of GHG credits after they have had an opportunity to bank GHG credits. Three years is the lifetime of a GHG credit to create a balance of supply and demand for GHG credits in the system and was based on the Division's projections of GHG credit availability in the GHG credit market each year.

The Commission heard testimony during the hearing from individuals, community groups and officials expressing concern that the regulations as proposed did not go far enough to provide the necessary reductions of co-pollutants in Disproportionately Impacted Communities, as well as testimony expressing the contrary concern that the regulations could adversely affect the production output and number of jobs in those industries covered by the rule. The Commission appreciates hearing from all who provided comments regarding the potential impacts and issues associated with this rulemaking. This rulemaking was directed by the legislature both to ensure greenhouse gas emission reductions from the industrial and manufacturing sector and to prioritize emission reductions that will reduce emissions of co-pollutants that adversely affect Disproportionately Impacted Communities. In adopting this rule, the Commission has worked to balance the conflicting concerns raised in the testimony. Recognizing that the rule presents new concepts and requirements that may need to be reevaluated to ensure the goals of the legislation and the rule's programs are met, the Commission:

1. Directs the Division to evaluate the trading program and to identify any modifications that may be necessary. If any such modifications are identified by the Division, the Commission requests that the Division bring a petition to request a rulemaking hearing to the Commission no later than September 2025.

2. Directs the Division to report to the Commission on or before December 31, 2025 on:

    a. The status of the trading program;

    b. The co-pollutant reductions associated with the credits generated for the trades;

    c. Updated projections for the 2026 credit market, and likely compliance pathways for the GEMM 2 facilities.

    d. The 2022- 2024 GHG emissions from both the GEMM 1 and GEMM 2 facilities

    e. The GHG plans submitted by the covered facilities and information on emissions reduction strategies in the plans including co-pollutant reductions.

The Commission also made typographical, grammatical, and formatting corrections throughout the regulations.

Additional Considerations

The following are additional findings of the Commission made in accordance with the Act:

§ *25-7-110.5(5)(b), C.R.S.*

As these revisions exceed and may differ from the federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), C.R.S., the Commission determines:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

Manufacturing sector stationary sources are required to report GHG emissions under existing federal regulations. The Mandatory Reporting Rule requires sources with annual emissions equal to or greater than 25,000 metric tons of CO2e per year to report through the EPA's Greenhouse Gas Reporting Program. Some specific source types are considered "all in" and required to report GHG emissions even if they are under the 25,000 metric ton per year threshold. However, emission reduction requirements such as those in Regulation Number 27 are not part of any federal law or regulation.

(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;

The applicable federal requirements are not performance-based or technology-based because they are reporting requirements only. Manufacturing sector stationary sources are required to report GHG emissions under existing federal regulations. The Mandatory Reporting Rule requires sources with annual emissions equal to or greater than 25,000 metric tons of CO2e per year to report through the EPA's Greenhouse Gas Reporting Program. Some specific source types are considered "all in" and required to report GHG emissions even if they are under the 25,000 metric ton per year threshold.

(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;

There are no federal requirements that specifically address the issues that are of concern to Colorado.

(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost-effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;

The adopted revisions give meaningful effect to § 25-7-105(1)(e)(XIII), C.R.S., and provide regulated entities flexibility to identify and cost-effectively employ emissions control technologies with guidance of a regulatory price cap. The covered GEMM 2 facilities are allowed to comply using the GHG credit trading system to allow for flexibility.

(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirements;

There are no applicable federal requirements that create any timing issues. Part B allows regulated entities a reasonable time to comply with the reduction requirements and to submit the GHG reduction plan. It also allows opportunities for GEMM 2 facilities to use the GHG credit trading system opportunities for alternative compliance.

(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;

Regulation Number 27 does not set constraints on production for covered facilities. Regulated entities may use the GHG credit trading system after onsite measures are employed. Regulated entities may also use the program if the facility must increase in direct GHG emissions as a result of increased production. In addition, regulated entities m ay pay into a state-managed GHG reduction fund for purposes of compliance, if and when such a fund is established.

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

All covered GEMM 2 facilities are subject to the GHG reduction requirements depending on multiple, equity-focused factors. The proposal assigns tiered reduction requirements based largely on the facilities' achieved reductions in an equitable manner. Those that had achieved significant GHG emission reductions since 2015 have a lesser 2030 reduction obligation than those that had reduced less than 20%, or increased emissions. Additionally, facilities that are the larger emitters relative to the group's total emissions have an additional percentage of reduction required because of the impact the facilities have on the group reaching a 20% reduction from 2015 by 2030, and facilities with more emissions tend to have more opportunities to reduce GHG emissions, versus the smaller facilities in the group.

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

The General Assembly has acknowledged that climate change impacts Colorado's economy and directed that GHG emissions should be reduced across all sectors of our economy. Colorado has established specific GHG reduction goals. Reductions not achieved in one sector will require measures in other sectors of the economy to achieve the state's GHG reduction goals.

Furthermore, the General Assembly provided requirements that the industrial sector in Colorado reduce its GHG emissions by 20% by 2030 compared to what it emitted in 2015. The GEMM 2 rule is addressing emissions from the manufacturing sector, which account for approximately one-third of the industrial sector's total emissions. The facilities regulated under both GEMM 1 and the proposed revisions of GEMM 2 account for 75% of the manufacturing sector's emissions. Reductions not timely realized by these facilities will require additional measures to achieve reductions in other industrial sources, many of which are already regulated for GHG emissions, to reach the state's industrial sector 2030 target.

(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;

Regulation Number 27 gives effect to the General Assembly's adoption of § 25-7-105(1)(e)(XIII), C.R.S. which is a unique requirement of Colorado law. The "compelling reason" for the GHG reduction plans and annual compliance reports required under Part B of Regulation Number 27 is to ensure satisfaction of § 25-7-105(1)(e)(XIII), C.R.S. Such plans and reports will also inform the state's strategies and future regulations to accomplish the statewide GHG pollution reduction goals and address the impacts of climate change set forth in § 25-7-102(2), C.R.S. and further sector-specific emission reductions under § 25-7-105(1)(e)(XIII), C.R.S.

(X) Whether demonstrated technology is available to comply with the proposed requirement;

Regulation Number 27 does not require the use of any specific technology but instead serves as a mechanism to assure reductions are achieved by specific manufacturing sources by setting individual GHG reduction requirements for applicable facilities and allowing a GHG credit trading system to reach those targets. Regulation Number 27 also does not require the use of any specific technology for reducing harmful air pollution, but instead prompts regulated entities to evaluate the control technologies that may have such results. The GHG reduction plans are used to conduct this evaluation and must include analyses of, but not necessarily implementation of, transformative technologies. All measures identified in the GHG reduction plans will be based on demonstrated and available technologies.

(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain;

The revisions to Regulation Number 27 enable the Commission to require specific mass-based reduction requirements for large manufacturing facilities. The covered GEMM 2 facilities are required to comply first with technically feasible onsite reduction measures up to the 2030 social cost of GHGs, and if they are not able to achieve their reduction goal utilizing onsite measures, they may use the GHG credit trading system.

The GHG emissions reductions from this rule are expected to help Colorado achieve the statewide GHG pollution reduction goals in § 25-7-102(2)(g), C.R.S., and the sector-specific GHG emission reductions set forth in § 25-7-105(1)(e)(XIII), C.R.S. Anticipated reductions in co-pollutants are expected to have positive health benefits for the people of Colorado.

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

This rule implements the statutory requirements of §§ 25-7-105(1)(e)(XIII), C.R.S. Alternatives exist for how to accomplish these requirements, including different emission thresholds for qualifying entities, different standards for evaluating GHG reduction plans and measures, and the provision of no or differing means of alternative compliance as well as different timing requirements for emission reductions. The Commission determined that Part B appropriately gives effect to the statutory requirements and is consistent with the statewide and sector-specific GHG pollution reduction goals. A no-action alternative is not available under § 25-7-105(1)(e), C.R.S.

Findings of Fact

To the extent that § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based on reasonably available, validated, reviewed, and sound scientific methodologies and all validated, reviewed, and sound scientific methodologies and information made available by interested parties has been considered.

(II) Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in GHG pollution and co-pollutants and will enable the Commission to satisfy the requirements of §§ 25-7-102, -105(1)(e), -106, and/or -109, C.R.S., as applicable.

(III) Evidence in the record supports the finding that the rule shall bring about reductions in risks to human health and the environment that will justify the costs to government, the regulated community, and to the public to implement and comply with the rule.

(IV) The rules are the most cost-effective to achieve the necessary and desired results and reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

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Office of the Attorney General

Tracking number: 2023-00273

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

Air Quality Control Commission

on 10/20/2023

5 CCR 1001-31

REGULATION NUMBER 27 GREENHOUSE GAS EMISSIONS AND ENERGY MANAGEMENT FOR THE MANUFACTURING SECTOR

The above-referenced rules were submitted to this office on 11/01/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 06, 2023 11:52:55

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Laboratory Services Division

CCR number

5 CCR 1005-5

Rule title

5 CCR 1005-5 HEMP TESTING LABORATORY CERTIFICATION 1 - eff 12/15/2023

Effective date

12/15/2023

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF DISEASE CONTROL AND PUBLIC HEALTH RESPONSE

HEMP TESTING LABORATORY CERTIFICATION

5 CCR 1005-5

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

Adopted by the Board of Health on October 18, 2023

1.3 Definitions

*****[Publication Instructions: Replace current existing text in Section 1.3 Definitions with the text below.]**

The following terms, whenever used in or referred to in these regulations, shall have the following respective meanings:

1.3.1 "Acceptability Criteria" means the specified limits placed on the characteristics of an item or method that are used to determine data quality.

1.3.2 "Accreditation" means approval by an impartial non-profit organization that operates in conformance with the International Organization for Standardization (ISO) / International Electrotechnical Commission (IEC) standard 17011 and is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA) for Testing.

1.3.3 "Action Level" means the threshold value that provides the criterion for determining whether a Sample passes or fails an analytical test.

1.3.4 "Analyte" means the substance of interest in the analysis.

1.3.5 "Cannabinoid" means a class of lipophilic molecules that are naturally occurring in cannabis, including Hemp and marijuana.

1.3.6 "CBD" means cannabidiol.

1.3.7 "CBDA" means cannabidiolic acid.

1.3.8 "Chain of Custody" or "COC" means the chronological documentation that records the sequence of custody, control, transfer, analysis, and disposal of a Sample.

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

1.3.10 “Certificate of Analysis” means an official document issued by a certified Hemp Testing Laboratory that shows results of scientific tests performed on a product.

1.3.11 “Delta-9 tetrahydrocannabinol” or “delta-9 THC” has the same meaning as "tetrahydrocannabinols" as set forth in section 27-80-203 (24). C.R.S. Delta-9 THC (CAS 1972-08-3) is the primary psychoactive component of cannabis. For the purposes of these regulations, the terms "Delta-9 THC" and "THC" are interchangeable.

1.3.12 “Department” means the Colorado Department of Public Health and Environment.

1.3.13 “Dry Weight Basis” means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

1.3.14 “Exclusivity” means the specificity of the test method for validating microbial testing methods. It evaluates the ability of the method to distinguish the Target Organisms from similar but genetically distinct non-target organisms.

1.3.15 “Hemp Testing Laboratory” means a public or private laboratory certified, or approved by the Department, to perform compliance testing on Hemp and Hemp Products.

1.3.16 “Inclusivity” means, related to microbiological method validation, the sensitivity of the test method. It evaluates the ability of the test method to detect a wide range of Target Organisms by a defined relatedness.

1.3.17 “Hemp” or “hemp” means the plant Cannabis sativa L. and any part of the plant, Including the seeds, all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a Delta-9 tetrahydrocannabinol concentration of no more than 0.3% on a dry-weight basis.

1.3.18 “Hemp Cultivator” means a producer that grows Hemp undercurrent registration issued by the Colorado Department of Agriculture.

1.3.19 “Hemp Extract” means an unfinished hemp product or hemp product produced through a solvent or non-solvent based hemp manufacturing process, including but not limited to oils, distillates, resins, and isolates.

1.3.20 “Hemp Manufacturer” means a facility where hemp products are manufactured or stored under a current registration issued by the Colorado Department of Public Health and Environment.

1.3.21 “Hemp Product” means a finished product that contains Hemp and that:-

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

b. Is intended for human use or consumption;

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

d. Is produced from hemp;

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

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

1.3.22 “Instrument Detection Limit” (IDL) is the concentration equivalent to a signal, due the analyte of interest, which is the smallest signal that can be distinguished from background noise by a particular instrument. The IDL should always be below the method detection limit, and is not used for compliance data reporting, but may be used for statistical data analysis and comparing the attributes of different instruments. The IDL is similar to the "critical level" and "criterion of detection" as defined in the literature.

1.3.23 “Limit of Detection” (LOD) or detection limit, is the lowest concentration level that can be determined to be statistically different from a blank (99% confidence). The LOD is typically determined to be in the region where the signal to noise ratio is greater than 5. Limits of detection are matrix, method, and analyte specific.

Note: For the purposes of laboratory certification, the LOD is approximately equal to the Method Detection Limit (MDL) for those tests in which the MDL can be calculated.

1.3.24 “Limit of Quantitation” (LOQ), or lower limit of quantitation (LOQ), is the level above which quantitative results may be obtained with a specified degree of confidence. The LOQ is mathematically defined as equal to 10 times the standard deviation of the results for a series of replicates used to determine a justifiable limit of detection. Limits of quantitation are matrix, method, and analyte specific.

1.3.25 “Matrix” means the components of a Sample other than the Analyte(s) of interest (i.e., Sample type).

1.3.26 “Measurement Uncertainty” is defined as a parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the measurand. The following equation is recommended:

Equation:

$$U = k \times u_r$$

Where, $u_c = \sqrt{u_r^2 + u_R^2 + u_{bias}^2}$

And:

u = standard uncertainty (standard deviation)

u_r = uncertainty due to repeatability

u_R = uncertainty due to reproducibility

u_{bias} = uncertainty due to accuracy (bias)

u_c = combined standard uncertainty

U = Expanded uncertainty = $\frac{u_c}{\text{Mean}} * k_{95\% \text{ confidence level}}$, k = 2

k = coverage factor, use 2 for a 95% confidence level

1.3.27 "Moisture Content" means the percentage of water in a Sample, by weight.

1.3.28 "Nonconformance" means a non-fulfillment of a requirement or departure from written procedures, work instructions, or quality system, as defined by the laboratory's written Corrective Action and Preventive Action procedures.

1.3.29 "Person" means a natural person, an estate, a trust, an Entity, or a state or other jurisdiction.

1.3.30 "Preventive Action" means a proactive action implemented to eliminate the cause of a potential Nonconformance or other quality problem before it occurs.

1.3.31 "Proficiency Testing" means an assessment of the performance of a Hemp Testing Laboratory's methodology and processes. Proficiency Testing is also known as inter laboratory comparison. The goal of Proficiency Testing is to ensure results are accurate, reproducible, and consistent.

1.3.32 "Quality Control" means the set of measures implemented within an analytical procedure to ensure that the measurement system is operating in a state of statistical control for which errors have been reduced to acceptable levels.

1.3.33 "Reference Material" means material containing a known concentration of an Analyte of interest that is in solution or in a homogeneous Matrix.

1.3.34 "Reference Method" means the method by which the performance of an alternate method is measured or evaluated.

1.3.35 "Sample" means the Hemp, Hemp Product or Unfinished Hemp Product submitted to a Hemp Testing Laboratory for compliance testing required by the Department or the Colorado Department of Agriculture.

1.3.36 "Scope of Accreditation" means the tests or types of tests performed, materials or products tested, and the methods used for testing cannabis or cannabis products for which the accreditation has been granted.

1.3.37 “Standard Operating Procedure” (SOP) means a written document that provides detailed instructions for the performance of all aspects of an analysis, operation, or action.

1.3.38 “Target Organism” means an organism that is being tested for in an analytical procedure or test method.

1.3.39 For purposes of testing hemp, “THC” means delta-9-tetrahydrocannabinol.

1.3.40 For purposes of testing hemp products, “THC” means the substance contained in the plant cannabis species, in the resinous extracts of the cannabis species, or a carboxylic acid of, derivative of, salt of, isomer of,or salt or acid of an isomer of these substances. "Tetrahydrocannabinol" or "THC" includes:

A. DELTA-10 THC and its isomers;

B. DELTA-9 THC and its isomers;

C. DELTA-8 THC and its isomers;

D. DELTA-7 THC and its isomers;

E. DELTA-6A, 10A THC and its isomers; and

F. EXO-TETRAHYDROCANNABINOL;

"TETRAHYDROCANNABINOL" OR "THC" may also contain:

A. products of any of the compounds listed in subsections (a) to (f) of this section; or

B. metabolites of any of the compounds listed in subsections (a) to (f) of this section.

1.3.41 “THCA” means DELTA-9 tetrahydrocannabinolic acid.

1.3.42 “Total CBD” means the sum of the percentage by weight of CBDA multiplied by 0.877 plus the percentage by weight of CBD i.e., Total CBD= (%CBDA x 0.877) + %CBD.

1.3.43 For purposes of testing hemp, “Total THC” means the sum of the percentage by weight of THCA multiplied by 0.877 plus the percentage by weight of THC i.e., Total THC = (%THCA x 0.877) + %THC.

1.3.44 “Unfinished Hemp Product” means an oil, concentrate or other substance that has a total THC concentration above 0.3% and less than or equal to 5.0%, is not for consumer use or distribution, must be sold or transferred between registered manufacturers, and will undergo further refinement or processing into a hemp product.

Rule 2: Hemp Testing Laboratory Certification Authorizations

*****[Publication Instructions: Replace current existing text in Rule 2 Hemp Testing Laboratory Certification Authorizations with the text below.]**

2.1 Testing of Hemp Authorized. A Hemp Testing Laboratory may accept Samples of Hemp, Hemp Products, and Unfinished Hemp Products from Persons registered with the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-104, C.R.S. or registered with the

Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S. for testing purposes only.

2.1.1 Before a Hemp Testing Laboratory accepts a Sample of Hemp, Hemp Product or Unfinished Hemp Product, the laboratory shall verify that the Person submitting the Sample is registered with the Colorado Department of Agriculture or registered with the Colorado Department of Public Health and Environment.

2.2 A Hemp Testing Laboratory shall be permitted to test Samples of Hemp, Hemp Product, and Unfinished Hemp Product for required tests pursuant to Department hemp product regulations and 35-61-105.5(d), C.R.S. only in the category(ies) that the Hemp Testing Laboratory is certified to perform testing in pursuant to Rule 4.1 – Hemp Testing Laboratory: Certification Requirements.

2.3 Transferring Samples to another Certified Hemp Testing Laboratory. A Hemp Testing Laboratory may transfer Samples to another certified Hemp Testing Laboratory for testing. All laboratory reports provided to an Hemp Cultivator or Hemp Manufacturer must identify the Hemp Testing Laboratory that actually conducted the test.

2.4 A Hemp Testing Laboratory shall provide the results of any required compliance testing performed on a Sample of Industrial Hemp, Hemp Product, and Unfinished Hemp Product to the Person submitting the Sample. Quality control data associated with the Sample shall be provided when requested by the Person submitting the Sample.

2.4.1 Results for Total THC compliance testing of Hemp must also be provided to the Colorado Department of Agriculture.

2.4.2 Results for Total THC compliance testing of Hemp must also be provided to the United States Department of Agriculture (USDA) in accordance with federal guidelines.

2.5 To the extent any activities authorized under these rules are also subject to the Colorado Marijuana Rules, 1 CCR 212-3, the provisions imposing the greater restriction shall be applicable.

Rule 3: Hemp Testing Laboratories: General Limitations or Prohibited Acts

*****[Publication Instructions: Replace current existing text in Section 3.1 with the text below.]**

3.1 Conflicts of Interest. The Hemp Testing Laboratory, including those that are internal departments of Hemp Cultivators or Hemp Manufacturers, shall establish policies to prevent the existence of or appearance of undue commercial, financial, or other influences that may diminish the competency, impartiality, and integrity of the Hemp Testing Laboratory's testing processes or results, or that may diminish public confidence in the competency, impartiality and integrity of the Hemp Testing Laboratory's testing processes or results. At a minimum, employees, owners or agents of a Hemp Testing Laboratory who participate in any aspect of the analysis, resulting, and/or reporting of a Sample are prohibited from improperly influencing the testing process, improperly manipulating data, or improperly benefiting from any on-going financial, employment, personal or business relationship with the Hemp Cultivator or Hemp Manufacturer that provided the Sample. The Hemp Testing Laboratory shall provide documentation showing a clear delineation between production and lab testing activities reflected in their quality management system documentation. Any conflicts of interest must be documented and disclosed.

*****[Publication Instructions: Replace current existing text in Section 3.2 with the text below.]**

3.2 Transfer of Hemp and Hemp Product Prohibited. A Hemp Testing Laboratory shall not transfer Hemp or Hemp Product to an Hemp Cultivator or Hemp Manufacturer or a consumer, except that a Hemp Testing Laboratory may transfer a Sample to another Hemp Testing Laboratory.

*****[Publication Instructions: Replace current existing text in Section 3.4.2 with the text below.]**

3.4.2 The Sample of Hemp has not been collected in accordance with 8 CCR 1203- 23.

Rule 4: Hemp Testing Laboratories: Certification Requirements

*****[Publication Instructions: Replace current existing text in Section 4.1.7 with the text below.]**

4.1.7 Moisture content; and

*****[Publication Instructions: Replace current existing text in Section 4.1.8 with the text below.]**

4.1.8 Other required regulatory compliance testing.

*****[Publication Instructions: Replace current existing text in Section 4.2.2.1 with the text below.]**

4.2.2.1 A Hemp Testing Laboratory must be accredited under the International Organization for Standardization/International Electrotechnical Commission 17025:2017 Standard (ISO/IEC 17025), or any subsequent superseding ISO/IEC 17025 standard, by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA). In order to obtain and maintain certification in a testing category from the Department, the Hemp Testing Laboratory's Scope of Accreditation must specify that particular testing category, including the applicable methods and Analytes. In addition, Hemp Testing Laboratories must be registered with the United States Drug Enforcement Administration, if required by applicable federal regulations.

*****[Publication Instructions: Replace current existing text in Section 4.2.2.2 with the text below.]**

4.2.2.2 Certification will be granted when laboratories have met all certification Requirements, including ISO/IEC 17025 accreditation.

*****[Publication Instructions: Replace current existing text in Section 4.2.2.3 with the text below.]**

4.2.2.3 The Department may grant provisional certification for a testing category if the laboratory has not yet obtained ISO/IEC 17025 accreditation but meets all other certification requirements. Such provisional certification shall be for a period not to exceed twelve months.

*****[Publication Instructions: Delete Section 4.2.2.4.]**

*****[Publication Instructions: Replace current existing text in Section 4.2.3.2 with the text below.]**.

4.2.3.2 Employee Competency. A Hemp Testing Laboratory must have a written and documented system to evaluate and document the competency of employees in performing authorized tests. Prior to independently analyzing Samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge Samples (proficiency Samples or internally generated quality controls). Analysts must, at a minimum, annually (or upon method modification) demonstrate continued acceptable competency.

*****[Publication Instructions: Replace current existing text in Section 4.2.12 with the text below.]**

4.2.12 Results Reporting. A Hemp Testing Laboratory must establish processes to ensure results are reported in a timely and accurate manner. A Hemp Testing Laboratory's process may require that the Hemp Cultivator or Hemp Product Manufacturer remit payment for anytest conducted by the laboratory prior to reporting results. A Hemp Testing Laboratory's process established under this subparagraph (12) must be maintained on the premises of the Hemp Testing Laboratory.

*****[Publication Instructions: Replace current existing text in Section 4.2.13 with the text below.]**

4.2.13 Conduct While Seeking Certification. A Hemp Testing Laboratory, and its agents and employees, shall provide all documents and information required or requested by the Department and its employees in a timely, full, faithful, truthful, and fair manner.

Rule 5: Hemp Testing Laboratories: Personnel

*****[Publication Instructions: Replace current existing text in Section 5.1.2.1 with the text below.]**

5.1.2.1 Be a Medical Doctor (M.D.) licensed to practice medicine and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; OR

Rule 6: Hemp Testing Laboratories: Standard Operating Procedures

*****[Publication Instructions: Add Section 6.1.2.1 with the text below.]**

6.1.2.1 All hemp products must be tested as received, must not be inappropriately manipulated, and tested in a manner that ensures results are representative of sample as received.

*****[Publication Instructions: Replace current existing text in Sections 6.1.19 through 6.1.26 with the text below.]**

6.1.19 Current step-by-step instructions with sufficient detail to perform the assay to include equipment operation and any abbreviated versions used by a testing

analyst;

6.1.20 Acceptability Criteria for the results of calibration standards and controls as well as between two aliquots, Sample duplicates, new standard lots, or columns;

6.1.21 A documented system for reviewing the results of testing calibrators, controls, standards, and Sample test results, as well as reviewing for clerical errors, analytical errors and any unusual analytical results; and

6.1.22 A documented system for issuing, implementing, and monitoring Corrective Actions, including instructions for the laboratory to contact the requesting entity, when required;

6.1.23 Policies and procedures to follow when Samples are requested for referral and testing by another certified Hemp Testing Laboratory or an approved local or state agency's laboratory;

6.1.24 Protocol and criteria for calculating and applying Measurement Uncertainty;

6.1.25 Policies and procedures including the titles and required training of individuals responsible for the transport of biohazardous materials; and

6.1.26 Procedures and/or protocols for general laboratory upkeep and cleaning, including specific procedures to eliminate or avoid cross-contamination.

Rule 7: Hemp Testing Laboratories: Analytical Processes

*****[Publication Instructions: Replace current existing text in Section 7.1.2 with the text below.]**

7.1.2 Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act, 8 CCR 1203-23 Part 4 and Department hemp product regulations.

*****[Publication Instructions: Replace current existing text in Section 7.1.5.1 through 7.1.5.10 with the text below.]**:

7.1.5.1 Validation plan;

7.1.5.2 Introduction and summary;

7.1.5.3 Materials, to include identification of certified Reference Materials, and preparation methods;

7.1.5.4 Method parameters;

7.1.5.5 Raw data, including instrument raw data such as chromatograms, for each test method and each instrument, if any;

7.1.5.6 Instrument calibration data, if any;

7.1.5.7 Data, calculations, and results;

7.1.5.8 Method Acceptability Criteria performance data;

7.1.5.9 Conclusion and discussion; and

7.1.5.10 References.

*****[Publication Instructions: Replace Section 7.1.9.1 with the text below.]**

7.1.9.1 Laboratories must validate or verify instrumentation and methodology immediately and prior to use following a change in location.

*****[Publication Instructions: Replace current existing text in Section 7.7.10 with the text below.]**

7.7.10 Evaluate and document the performance of the instrument after routine and preventive maintenance and when changes in: source, conditions, or detector are made prior to reporting test results; and

*****[Publication Instructions: Replace current existing text in Section 7.8.5 with the text below.]**

7.8.5 Verify the stated detection limit of qualitative assays through “dilution to extinction” studies in which the calculated extinction dilution is corroborated with cultural data.

*****[Publication Instructions: Replace current existing text in Sections 7.8.6 through 7.8.9 with the text below.]**

7.8.6 The laboratory shall include controls for each set of Samples. Quantitative microbial methods shall use controls of a specific known value or set of values that lies within the quantifiable range of the method;

7.8.7 For molecular methods, the laboratory shall include controls for each individual analytical run. Quantitative molecular methods shall use controls of a specific known value or set of values that lies within the quantifiable range of the method;

7.8.8 PCR-based and qPCR-based methods must include validated internal amplification controls; and

7.8.9 Microbial methods must include steps to confirm presumptive positive results; confirmation methods may be molecular or cultural or both. Where applicable, confirmation of viability must be performed.

*****[Publication Instructions: Replace current existing text in Section 7.11 with the text below.]**

7.11 Cannabinoid Methodology. At a minimum, analytical testing of Hemp for delta-9 tetrahydrocannabinol (THC) must use post-decarboxylation or other similarly reliable methods. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) into THC. The results reported must reflect the Total THC content.

7.11.1 The Total THC concentrations of Hemp shall be determined and reported on a Dry Weight Basis.

7.11.1.~~1~~ A Hemp Testing Laboratory must ensure reporting of Total THC includes a

calculation for moisture correction based on a theoretical concentration of zero percent moisture. The following conversion formula is recommended:

$$P2 = \left(\frac{100 - M2}{100 - M1}\right) P1$$

Where:
P2 = adjusted constituent percentages at moisture M2 (percent)
M2 = moisture basis (percent, i.e., 0%)
P1 = original (as-is) constituent percentage
M1 = original moisture (percent)

7.11.1.2 The Cannabinoid concentrations of Hemp Products shall be determined and reported on an “as-is” basis (i.e., in the form submitted to the laboratory).

*****[Publication Instructions: Add section 7.12 with the text below.]**

7.12 Testing and validation of complex matrices. a hemp testing laboratory must include a variety of matrices as part of the validation/verification process. during method validation/verification, a hemp testing laboratory must:

7.12.1 Select matrices which best represent each category of products to be tested as listed in department hemp product regulations. the laboratory shall independently determine the category of matrix a product falls within. properties to consider include fat content, cannabinoid content, pH, salt content, sugar content, water activity, the presence of known chemical compounds, microbial flora and antimicrobial compounds.

7.12.2 Perform a new matrix validation, prior to reporting results, on matrices which are either a new category of matrix or are considerably different from the original matrix validated within the category.

7.12.2.1 For example, the hemp testing laboratory intends to receive the topical product “bath bombs” for testing, but previous validation studies for topical products include lotion and massage oil. A new validation should be performed for the product prior to testing since salt content and other properties differ vastly from the original matrices validated.

7.12.3 Perform a matrix verification (a client matrix spike or similar consisting of the target analyte(s) at the time of analysis) on matrices submitted for testing which differ slightly from those initially validated, but which fall within a category already validated.

7.12.3.1 For example, the hemp testing laboratory receives a new edible type matrix for testing (snickerdoodle cookies), but previous validation included gummies and hard candy. a spike of a portion of the submitted material must be analyzed prior to, or at the time of, sample analysis.

Rule 8: Hemp Testing Laboratories: Proficiency Testing

*****[Publication Instructions: Add section 8.2.2 with the text below.]**

8.2.2. The department may designate proficiency testing providers which meet, at minimum, the following criteria:

8.2.2.1 Be a ISO 17043 accredited organization or be a government agency (state or federal),

8.2.2.2 Offer proficiency testing in cannabis matrices, offer proficiency testing which includes the analytes for which the laboratory is certified, and

8.2.2.3 offer proficiency testing which challenges the analytical method.

*****[Publication Instructions: Replace current existing text in Section 8.8 with the text below.]**

8.8 Unsatisfactory Participation in a Proficiency Testing Event. Unless the Hemp Testing Laboratory positively identifies at least 80% of the target Analytes tested, participation in the Proficiency Testing event will be considered unsatisfactory. A positive identification must include accurate quantitative and qualitative results as applicable. Any false negative or false positive result reported will be considered unsatisfactory participation in the Proficiency Testing event.

*****[Publication Instructions: Replace current existing text in Section 8.9 with the text below.]**

8.9 Consequence of Unsatisfactory Participation in Proficiency Testing Event. Unsatisfactory participation in a Proficiency Testing event may result in limitation, suspension or revocation of certification. A Hemp Testing Laboratory's certification will be suspended for the relevant testing category if two consecutive unsatisfactory Proficiency Testing events occur, or if two out of three consecutive unsatisfactory Proficiency Testing events occur. Certification may be reinstated after successful participation in the next Proficiency Testing event or successful completion of corrective actions. Failure to achieve a satisfactory score in the next test event will result in the revocation of the certification and will require two successful consecutive Proficiency Testing events before the laboratory may be eligible to reapply for certification. Any limitation, suspension or revocation of certification must be disclosed to clients.

Rule 9: Hemp Testing Laboratories: Quality Assurance and Quality Control

*****[Publication Instructions: Replace current existing text in Section 9.1.2 with the text below.]**

9.1.2 Documentation of Nonconformances and implementation of Corrective Actions and Preventive Actions when necessary;

*****[Publication Instructions: Add Section 9.2.8.1 with the text below.]**

9.2.8.1 The laboratory shall not remove data points from within a calibration range while still retaining the extreme ends of the calibration range. if a calibration point fails, the laboratory must re-prepare and re-analyze the calibration standard.

Rule 10: Hemp Testing Laboratories: Certificate of Analysis (COA)

*****[Publication Instructions: Add section 10.1.1 with the text below.]**

10.1.1 The COA shall indicate that the reported results are for compliance testing purposes for all samples analyzed.

*****[Publication Instructions: Delete section 10.3.1.]**

*****[Publication Instructions: Replace current existing text in Section 10.4.2 with the text below.]**

10.4.2 Hemp Cultivator's or Hemp Manufacturer's name, address, and USDA licensee

number if applicable;

***[Publication Instructions: Replace current existing text in Section 10.4.8 with the text below.]

10.4.8 For Samples of Hemp, identification of a pre-harvest or post-harvest retest (i.e., remediated) when applicable.

***[Publication Instructions: Replace current existing text in Section 10.4.9 with the text below.]

10.4.9 For Samples of Hemp, reported cannabinoid results must include the range of estimated uncertainty which shall be reported as a ± value in the same units of measure as the test result, following best practices for significant figures and rounding; and

***[Publication Instructions: Replace current existing text in Section 10.4.9.1 with the text below.]

10.4.9.1 For Samples of Hemp, reported cannabinoid results must provide a calculated Total THC value + uncertainty on a dry weight basis.

Rule 11: Hemp Testing Laboratories: Chain of Custody

***[Publication Instructions: Replace current existing text in Section 11.1.2 with the text below.]

11.1.2 Document identifying information of the submitting Hemp Cultivator or Hemp Manufacturer, including harvest or production batch identification;

Rule 13: Hemp Testing Laboratories: Business Records Required

***[Publication Instructions: Replace current existing text in Sections 13.1.2.2 through 13.1.2.8 with the text below.]

13.1.2.2 Visitor Log – List of all visitors entering any limited or restricted access areas as defined by the laboratory;

13.1.2.3 Waste Log – Comprehensive records regarding all waste that accounts for, Reconciles, and evidences all waste activity related to the disposal of any Sample that tests above 0.3% THC with at least 95% confidence and the disposal of any chemically hazardous or biohazardous waste;

13.1.2.4 Testing Records – The laboratory must maintain all testing records, to include calibration records, analytical data, calculations, test reports, and worksheets;

13.1.2.5 Standard Operating Procedures – All Standard Operating Procedures as required by these Rules;

13.1.2.6 Corrective Action and Preventive Action records;

13.1.2.7 Chain of Custody records; and

13.1.2.8 All other records required by these Rules.

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Attorney General

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Office of the Attorney General

Tracking number: 2023-00591

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

Laboratory Services Division

on 10/18/2023

5 CCR 1005-5

HEMP TESTING LABORATORY CERTIFICATION

The above-referenced rules were submitted to this office on 10/25/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 06, 2023 09:07:56

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-1 Part 03

Rule title

6 CCR 1007-1 Part 03 RADIATION CONTROL - LICENSING OF RADIOACTIVE MATERIAL 1 - eff 12/15/2023

Effective date

12/15/2023

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

RADIATION CONTROL - LICENSING OF RADIOACTIVE MATERIAL

6 CCR 1007-1 PART 03

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

Adopted by the Board of Health on October 18, 2023; effective December 15, 2023.

LICENSING OF RADIOACTIVE MATERIAL

*** * ***

[* * * indicates unaffected sections of the rule]

Published material incorporated by reference.

3.1.4.3 Throughout this Part 3, federal regulations, state regulations, and standards or guidelines of outside organizations have been adopted and incorporated by reference. Unless a prior version of the incorporated material is otherwise specifically indicated, the materials incorporated by reference cited herein include only those versions that were in effect as of the most recent effective date of this Part 3 (December 2023), and not later amendments or editions of the incorporated material.

3.1.4.4 Materials incorporated by reference are available for public inspection, and copies (including certified copies) can be obtained at reasonable cost, during normal business hours from the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246. Additionally, https://cdphe.colorado.gov/hm/radregs identifies where the incorporated federal and state regulations are available to the public on the internet at no cost. A copy of the materials incorporated in this Part is available for public inspection at the state publications depository and distribution center.

3.1.4.5 Availability from Source Agencies or Organizations.

(1) All federal agency regulations incorporated by reference herein are available at no cost in the online edition of the Code of Federal Regulations (CFR) hosted by the U.S. Government Printing Office, online at https://www.govinfo.gov/app/collection/cfr/.

(2) All state regulations incorporated by reference herein are available at no cost in the online edition of the Code of Colorado Regulations (CCR) hosted by the Colorado Secretary of State's Office, online athttps://www.sos.state.co.us/CCR/Welcome.do.

*** * ***

3.3.2 Exempt Quantities.

3.3.2.1 Except as provided in 3.3.2.3 and 3.3.2.4, any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities each of which does not exceed the applicable quantity set forth in Schedule 3B.

3.3.2.2 Any person who possesses radioactive material received or acquired under the general license formerly provided under 10 CFR Part 31.4 before September 25, 1971 is exempt from the requirements for a license set forth in this part to the extent that such person possesses, uses, transfers or owns such radioactive material.

*** * ***

3.5.2 Any person who receives, possesses, uses or transfers source material in accordance with the general license in 3.5.1:

3.5.2.1 Is prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the Department, NRC, or an Agreement State in a specific license.

*** * ***

3.5.8 Depleted Uranium in Industrial Products and Devices.

3.5.8.1 A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of 3.5.8.2, 3.5.8.3, and 3.5.8.4, depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

3.5.8.2 The general license in 3.5.8.1 applies only to industrial products or devices which have been manufactured either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to 3.12.13 or in accordance with a specific license issued to the manufacturer by the NRC or an Agreement State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the NRC or an Agreement State.

(1) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by 3.5.8.1 shall file Department Form R-52, “Registration Certificate - Use of Depleted Uranium Under General License”, with the Department.

(a) The form shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium.

(b) The general licensee shall furnish on Department Form R-52 the following information and such other information as may be required by that form:

(i) Name and address of the general licensee;

(ii) A statement that the general licensee has developed and will maintain procedures designed to establish physical control over the depleted uranium described in 3.5.8.1 and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(iii) Name and title, address, and telephone number of the individual duly authorized to act for and on behalf of the general licensee in supervising the procedures identified in 3.5.8.2(1)(b)(ii).

(2) The general licensee possessing or using depleted uranium under the general license established by 3.5.8.1 shall report in writing to the Department any changes in information previously furnished using Department Form R-52, "Registration Certificate - Use of Depleted Uranium Under General License". The report shall be submitted within 30 days after the effective date of such change.

* * *

3.6 General Licenses[2] - Radioactive Material Other Than Source Material.

[2] Different general licenses are issued in this section, each of which has its own specific conditions and requirements.

3.6.1 Reserved.

[3] Reserved

3.6.2 Reserved.

3.6.3 Reserved.

3.6.4 Certain Measuring, Gauging or Controlling Devices.

3.6.4.1 A general license is hereby issued to commercial and industrial firms and to research, educational and medical institutions, individuals in the conduct of their business, and State or local government agencies to receive, acquire, possess, use or transfer, in accordance with the provisions of 3.6.4.2, 3.6.4.3, and 3.6.4.4, radioactive material, excluding special nuclear material, contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

3.6.4.2 The general license in 3.6.4.1 applies only to radioactive material contained in devices which have been:

(1) Manufactured or initially transferred and labeled for distribution to persons generally licensed in accordance with the specifications contained in a specific license issued by:

(a) The Department pursuant to 3.12.4 or

(b) The NRC or an Agreement State[4]

[4] Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 CFR 179.21.

(2) Received from one of the specific licensees described in 3.6.4.2(1) or through a transfer made under 3.6.4.3(8).

3.6.4.3 Any person who owns, receives, acquires, possesses, uses, owns, or transfers radioactive material in a device pursuant to the general license in 3.6.4.1:

(1) Shall assure that all labels affixed to the device at the time of receipt, and bearing a statement that removal of the label is prohibited, are maintained thereon and shall comply with all instructions and precautions provided by such labels;

(2) Shall assure that the device is tested for leakage of radioactive material and proper operation of the “on-off” mechanism and indicator, if any, at no longer than 6-month intervals or at such other intervals as are specified in the label, however;

(a) Devices containing only krypton need not be tested for leakage of radioactive material; and

(b) Devices containing only tritium or not more than 3.7 MBq (100 µCi) of other beta- and/or gamma-emitting material or 0.37 MBq (10 µCi) of alpha-emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose.

(3) Shall assure that the tests required by 3.6.4.3(2) of this section and other testing, installation, servicing, and removal from installation involving the radioactive material, its shielding or containment, are performed:

(a) In accordance with the instructions provided by the labels; or

(b) By a person holding an applicable specific license from the Department, NRC or an Agreement State to perform such activities;

(4) Shall maintain records showing compliance with the requirements of 3.6.4.3(2) and 3.6.4.3(3).

(a) The records shall show the results of tests.

(b) The records also shall show the dates of performance of, and the names of persons performing, testing, installation, servicing, and removal from installation concerning the radioactive material, its shielding or containment.

(c) Records of tests for leakage of radioactive material required by 3.6.4.3(2) shall be maintained for 3 years after the next required leak test is performed or until the sealed source is transferred or disposed of.

(d) Records of tests of the “on-off” mechanism and indicator required by 3.6.4.3(2) shall be maintained for 3 years after the next required test of the “on-off” mechanism and indicator is performed or until the sealed source is transferred or disposed of.

(e) Records which are required by 3.6.4.3(3) shall be maintained for a period of 3 years from the date of the recorded event or until the device is transferred or disposed of;

(5) Upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the “on-off” mechanism or indicator, or upon the detection of 185 Bq (0.005 µCi) or more removable radioactive material, shall immediately suspend operation of the device and shall:

(a) Not operate the device until it has been repaired by the manufacturer or other person holding an applicable specific license from the Department, NRC or an Agreement State to repair such devices;

(b) Ensure that, if dispositioned, the device and any radioactive material from the device is disposed of by transfer to a person authorized by an applicable specific license to receive the radioactive material contained in the device;

(c) Within 30 days, furnish to the Department a report containing a brief description of the event and the remedial action taken; and

(d) In the case of detection of 185 Bq (0.005 microcurie) or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, furnish to the Director of the Hazardous Materials And Waste Management Division, within 30 days, a plan for ensuring that the premises and environs are acceptable for unrestricted use.

(i) Under these circumstances, the criteria set out in 4.61.2, “Radiological Criteria For Unrestricted Use,” may be applicable, as determined by the division on a case by case basis;

(6) Shall not abandon the device containing radioactive material;

(7) Shall not export the device except in accordance with 10 CFR Part 110 and shall obtain written approval from NRC before transferring the device to any other specific licensee not specifically identified in 3.6.4.3(8);

(8) Except as provided in 3.6.4.3(9), shall transfer or dispose of the device containing radioactive material:

(a) Only by transfer to a specific licensee of the Department, NRC or an Agreement State whose specific license authorizes receipt of the device; and

(b) Within 30 days after transfer or export, shall furnish to the Department a report containing:

(i) Identification of the device by manufacturer's (or initial transferor’s) name, model number and serial number;

(ii) The name, address and license number of the person receiving the device;

(iii) The date of the transfer;

(iv) The identity of the radionuclide(s) present and activity present, by assay or calculation;

(c) Shall obtain written Department approval before transferring the device to any other specific licensee not specifically identified in 3.6.4.3(8). However, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if, the holder:

(i) Verifies that the specific license authorizes the possession and use, or applies for and obtains an amendment to the license authorizing the possession and use;

(ii) Removes, alters, covers, or clearly and unambiguously augments the existing label (otherwise required by 3.6.4.3(1) of this part) so that the device is labeled in compliance with Part 4, Section 4.30; however the manufacturer, model number, and serial number must be retained;

(iii) Obtains the manufacturer's or initial transferor's information concerning maintenance that would be applicable under the specific license (such as leak testing procedures); and

(iv) Reports the transfer under 3.6.4.3(8)(b).

(9) Shall transfer the device to another general licensee only:

(a) Where the device remains in use at a particular location.

In such case the transferor shall give the transferee a copy of this regulation and any safety documents identified in the label on the device and within 30 days of the transfer, report to the Department the manufacturer's (or initial transferor's) name and model number and serial number of device transferred, the identity of the radionuclide(s) present and assayed or calculated activity present, the transferee's name and mailing address for the location of use, and the name, title, and phone number of the responsible individual identified by the transferee in accordance with 3.6.4.3(12) to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements; or

(b) Where the device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee; and

(10) Shall comply with the provisions of 4.51 and 4.52 for reporting radiation incidents, theft, or loss of licensed material, but shall be exempt from the other requirements of Parts 4 and 10;

(11) Shall respond to written requests from the Department to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request.

(a) If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the director of the Hazardous Materials and Waste Management Division a written justification for the request;

(12) Shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements.

(a) The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements; this appointment does not relieve the general licensee of any of its responsibility in this regard;

(13) Shall register each device annually in accordance with 3.6.4.3(13)(a) and 3.6.4.3(13)(b), and shall pay the fee required by Part 12, if in possession of a device containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, 3.7 MBq (0.1 mCi) of radium-226, or 37 MBq (1 mCi) of americium 241 or any other transuranic (i.e., element with atomic number greater than uranium (92)), based on the activity indicated on the label. Each address for a location of use, as described in 3.6.4.3(13)(b)(iv) of this section, represents a separate general licensee and requires a separate registration and fee.

(a) Registration must be done by verifying, correcting, and/or adding to the information provided in a request for registration received from the Department.

(i) The registration information must be submitted to the Department within 30 days of the date of the request for registration or as otherwise indicated in the request.

(b) In registering devices, the general licensee shall furnish the following information and any other information specifically requested by the Department:

(i) Name and mailing address of the general licensee;

(ii) Information about each device: the manufacturer (or initial transferor), model number, serial number, the radioisotope and activity (as indicated on the label);

(iii) Name, title, and telephone number of the responsible person designated as a representative of the general licensee under 3.6.4.3(12);

(iv) Address or location at which the device(s) are used and/or stored; for portable devices, the address of the primary place of storage;

(v) Certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information; and

(vi) Certification by the responsible representative of the general licensee that they are aware of the requirements of the general license.

(c) A general licensee holding devices meeting the criteria of 3.6.4.3(13) is subject to the bankruptcy notification requirement in 3.15.5.

(d) Persons generally licensed by an Agreement State with respect to devices meeting the criteria in paragraph 3.6.4.3(13) are not subject to

U.S. Nuclear Regulatory Commission registration requirements if the devices are used in areas subject to NRC jurisdiction for a period less than 180 days in any calendar year. The Commission will not request registration information from such licensees.

(14) Shall report changes to the mailing address for the location of use (including change in name of general licensee) to the director of the hazardous materials and waste management division within 30 days of the effective date of the change.

(a) For a portable device, a report of address change is only required for a change in the device's primary place of storage.

(15) May not hold a device that is not in use for longer than 2 years.

(a) If a device with shutters is not being used, the shutter must be locked in the closed position.

(b) The testing required by 3.6.4.3(2) need not be performed during the period of storage only.

(c) However, when a device is put back into service or transferred to another person, and has not been tested within the required test interval, the device must be tested for leakage before use or transfer and the shutter tested before use.

(d) A device kept in standby for future use is excluded from the two-year time limit if the general licensee performs quarterly physical inventories of the device while the device is in standby.

3.6.4.4 The general license in 3.6.4.1 does not authorize the manufacture of devices containing radioactive material.

3.6.4.5 The general license provided in 3.6.4.1 is subject to the provisions of 1.4 through 1.9, 3.15, 3.22, 3.23 and Part 17.

3.6.5 Luminous Safety Devices for Aircraft.

3.6.5.1 A general license is hereby issued to receive, acquire, possess, and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(1) Each device contains not more than 370 GBq (10 Ci) of tritium or 11.1 GBq (300 mCi) of promethium-147; and

(2) Each device has been manufactured, assembled or imported in accordance with a specific license issued by the NRC or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the Department or any Agreement State to the manufacturer or assembler of such device pursuant to licensing requirements equivalent to those in Section 32.53 of 10 CFR Part 32.

3.6.5.2 Persons who own, receive, acquire, possess, or use luminous safety devices pursuant to the general license in 3.6.5.1 are exempt from the requirements of Parts 4 and 10 except that they shall comply with the provisions of 4.51 and 4.52.

3.6.5.3 This general license does not authorize the manufacture, assembly, or repair of luminous safety devices containing tritium or promethium-147.

3.6.5.4 This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

3.6.5.5 This general license is subject to the provisions of 1.4 through 1.9, 3.15, 3.22, 3.23, and Part 17.

3.6.6 Ownership of Radioactive Material.

3.6.6.1 A general license is hereby issued to own radioactive material without regard to quantity.

3.6.6.2 Notwithstanding any other provisions of this part, this general license does not authorize the manufacture, production, transfer, receipt, possession or use of radioactive material.

3.6.7 Calibration and Reference Sources.

3.6.7.1 A general license is hereby issued to those persons listed below to own, receive, acquire, possess, use, and transfer, in accordance with the provisions of 3.6.7.4 and 3.6.7.5, americium-241 in the form of calibration or reference sources:

(1) Any person who holds a specific license issued by the Department which authorizes receipt, possession, use, and transfer of radioactive material; and

(2) Any person who holds a specific license issued by the NRC which authorizes receipt, possession, use, and transfer of special nuclear material.

3.6.7.2 A general license is hereby issued to own, receive, possess, use, and transfer plutonium in the form of calibration or reference sources in accordance with the provisions of 3.6.7.4 and 3.6.7.5 to any person who holds a specific license issued by the Department which authorizes the licensee to receive, possess, use, and transfer radioactive material.

3.6.7.3 A general license is hereby issued to own, receive, possess, use, and transfer radium 226 in the form of calibration or reference sources in accordance with the provisions of 3.6.7.4 and 3.6.7.5 to any person who holds a specific license issued by the Department which authorizes the licensee to receive, possess, use, and transfer radioactive material.

3.6.7.4 The general licenses in 3.6.7.1, 3.6.7.2, and 3.6.7.3 apply only to calibration or reference sources which have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued to the manufacturer or importer of the sources by the NRC pursuant to Section 32.57 of 10 CFR Part 32 or Section 70.39 of 10 CFR Part 70 or which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the Department or any Agreement State pursuant to licensing requirements equivalent to those contained in Section 32.57 of 10 CFR Part 32 or Section 70.39 of 10 CFR Part 70.

3.6.7.5 The general licenses provided in 3.6.7.1, 3.6.7.2, and 3.6.7.3 are subject to the provisions of 1.4 through 1.9, 3.15, 3.22, 3.23 and 3.24, and Parts 4 and 10. In addition, persons who own, receive, acquire, possess, use, or transfer one or more calibration or reference sources pursuant to these general licenses, shall:

(1) Not possess at any one time, at any one location of storage or use, more than 185 kBq (5 µCi) of americium-241, 185 kBq (5 µCi) of plutonium, or 185 kBq (5 µCi) of radium-226 in such sources;

(2) Not receive, possess, use, or transfer such source unless the source, or the storage container, bears a label which includes one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, as appropriate:

(a) The receipt, possession, use and transfer of this source, Model ___, Serial No.__ are subject to a general license and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL - THIS SOURCE CONTAINS (AMERICIUM-241) (PLUTONIUM) (RADIUM-226).[5] DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

[5] Showing only the name of the appropriate material.

_____

Name of manufacturer or importer

(3) Not transfer, abandon, or dispose of such source except by transfer to a person authorized by a license from the Department, NRC or an Agreement State to receive the source;

(4) Store such source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241, plutonium, or radium-226 which might otherwise escape during storage; and

(5) Not use such source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

3.6.7.6 These general licenses do not authorize the manufacture, import, or export of calibration or reference sources containing americium-241, plutonium or radium-226.

3.6.8 General license for certain items and self-luminous products containing radium-226.

3.6.8.1 A general license is hereby issued to any person to acquire, receive, possess, use, or transfer, in accordance with the provisions of 3.6.8.2 through 3.6.8.4., radium-226 contained in the following products manufactured prior to November 30, 2007.

(1) Antiquities originally intended for use by the general public.

For the purposes of 3.6.8.1(1), antiquities mean products originally intended for use by the general public and distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads.

(2) Intact timepieces containing greater than 0.037 MBq (1 µCi), nonintact timepieces, and timepiece hands and dials no longer installed in timepieces.

(3) Luminous items installed in air, marine, or land vehicles.

(4) All other luminous products, provided that no more than 100 items are used or stored at the same location at any one time.

(5) Small radium sources containing no more than 0.037 MBq (1 µCi) of radium-226.

For the purposes of 3.6.8.1(5), ‘‘small radium sources’’ means discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations (such as cloud chambers and spinthariscopes), electron tubes, lightning rods, ionization sources, static eliminators, or as designated by the NRC.

3.6.8.2 Persons who acquire, receive, possess, use, or transfer radioactive material under the general license issued in 3.6.8.1 are exempt from the provisions of Parts 4 and 10 of these regulations, to the extent that the receipt, possession, use, or transfer of radioactive material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to any such person specifically licensed under this Part.

3.6.8.3 Any person who acquires, receives, possesses, uses, or transfers radioactive material in accordance with the general license in 3.6.8.1 shall:

(1) Notify the Department should there be any indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event, and the remedial action taken, must be furnished to the Department within 30 days.

(2) Not abandon products containing radium-226. The product, and any radioactive material from the product, may only be disposed of according to Part 4, Section 4.39.2 of these regulations or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the NRC or an Agreement State.

(3) Not export products containing radium-226 except in accordance with 10 CFR Part 110.

(4) Dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with any Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 by a specific license issued under this Part, or equivalent regulations of the NRC or an Agreement State, or as otherwise approved by the NRC or an Agreement State.

(5) Respond to written requests from the Department to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the Department, a written justification for the request.

3.6.8.4. The general license in 3.6.8.1 does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226, except that timepieces may be disassembled and repaired.

3.6.9 General License for Use of Radioactive Material for Certain *In Vitro* Clinical or Laboratory Testing.[6]

[6] The New Drug provisions of the Federal Food, Drug, and Cosmetic Act also govern the availability and use of any specific diagnostic drugs in interstate commerce.

3.6.9.1 A general license is hereby issued to any physician, veterinarian, clinical laboratory or hospital to receive, acquire, possess, transfer or use, for any of the following stated tests,

in accordance with the provisions of 3.6.9.2, 3.6.9.3, 3.6.9.4, 3.6.9.5, and 3.6.9.6, the following radioactive materials in prepackaged units for use in *in vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

(1) Carbon-14, in units not exceeding 370 kBq (10 µCi) each;

(2) Cobalt-57, in units not exceeding 370 kBq (10 µCi) each;

(3) Hydrogen-3 (tritium), in units not exceeding 1.85 MBq (50 µCi) each;

(4) Iodine-125, in units not exceeding 370 kBq (10 µCi) each;

(5) Mock Iodine-125 reference or calibration sources, in units not exceeding 1.85 kBq (0.05 µCi) of iodine-129 and 185 Bq (0.005 µCi) of americium-241 each;

(6) Iodine-131, in units not exceeding 370 kBq (10 µCi) each;

(7) Iron-59, in units not exceeding 740 kBq (20 µCi) each; or

(8) Selenium-75, in units not exceeding 370 kBq (10 µCi) each.

3.6.9.2 No person shall receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by 3.6.9.1 until the person has filed Department Form R-27, “Certificate - *In Vitro* Testing with Radioactive Material Under General License”, with the Department and received from the Department a validated copy of Department Form R-27 with certification number assigned. The physician, veterinarian, clinical laboratory or hospital shall furnish on Department Form R-27 the following information and such other information as may be required by that form:

(1) Name and address of the physician, veterinarian, clinical laboratory or hospital;

(2) The location of use; and

(3) A statement that the physician, veterinarian, clinical laboratory or hospital has appropriate radiation measuring instruments to carry out *in vitro* clinical or laboratory tests with radioactive material as authorized under the general license in 3.6.9.1 and that such tests will be performed only by personnel competent in the use of such instruments and in the handling of the radioactive material.

3.6.9.3 A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by 3.6.9.1 shall comply with the following requirements.

(1) The general licensee shall not possess at any one time, pursuant to the general license in 3.6.9.1, at any one location of storage or use, a total amount of iodine 125, iodine 131, selenium 75, iron 59, and/or cobalt 57 in excess of 7.4 MBq (200 µCi).

(2) The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection.

(3) The general licensee shall use the radioactive material only for the uses authorized by 3.6.9.1.

(4) The general licensee shall not transfer the radioactive material to a person who is not authorized to receive it pursuant to a license issued by the Department, NRC or any Agreement State nor transfer the radioactive material in any manner other than in the unopened, labeled shipping container as received from the supplier.

(5) The general licensee shall dispose of the Mock Iodine 125 reference or calibration sources described in 3.6.9.1(5) as required by 4.33.

3.6.9.4 The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to 3.6.9.1:

(1) Except as prepackaged units which are labeled in accordance with the provisions of an applicable specific license issued pursuant to 3.12.8 or in accordance with the provisions of a specific license issued by the NRC or any Agreement State which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), iron-59, selenium-75, cobalt-57, or Mock Iodine-125 to persons generally licensed under 3.6.9 or its equivalent; and

(2) Unless one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(a) This radioactive material shall be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for *in vitro* clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or an Agreement State.

_____

Name of manufacturer

3.6.9.5 The physician, veterinarian, clinical laboratory or hospital possessing or using radioactive material under the general license of 3.6.9.1 shall report in writing to the Department, any changes in the information previously furnished using the “Certificate - *In Vitro* Testing with Radioactive Material Under General License”, Department Form R-27. The report shall be furnished within 30 days after the effective date of such change.

*** * ***

3.8.9 Except as provided in 3.8.9.3, 3.8.9.4, and 3.8.9.5, an application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source must either:

3.8.9.1 Identify the source or device by manufacturer and model number as registered with the NRC under 10 CFR Part 32.210 or with an Agreement State, or for a source or a device containing radium-226 or accelerator produced radioactive material with an Agreement State under provisions comparable to 10 CFR Part 32.210; or

3.8.9.2 Contain the information identified in 3.12.14.3; or

3.8.9.3 For sources or devices manufactured before October 23, 2012 that are not registered with the NRC under 10 CFR Part 32.210 or with an Agreement State, and for which the applicant is unable to provide all categories of information specified in 3.12.14.3, the application must include:

*** * ***

3.8.10 An application from a medical facility, educational institution, or Federal facility to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to licensees in its consortium authorized for medical use under Part 7 of these regulations or equivalent Agreement State requirements shall include:

3.8.10.1 A request for authorization for the production of PET radionuclides or evidence of an existing license issued under this Part or Agreement State requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides.

3.8.10.2 Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in 3.12.10.1(2).

3.8.10.3 Identification of individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in 3.12.10.2(2).

3.8.10.4 Information identified in 3.12.10.1(3) on the PET drugs to be noncommercially transferred to members of its consortium.

*** * ***

3.9.6.3 Waste collectors and waste processors, as defined in Part 4, Appendix D, shall establish a Department-approved decommissioning funding plan to assure the availability of funds for decommissioning activities conducted over the life of the licensed facility.

*** * ***

3.12 Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices which Contain Radioactive Material.

3.12.1 A licensee authorized to introduce radioactive material into a product or material owned by or in the possession of the licensee or another to be transferred to persons exempt under 3.3.1.1 shall meet the requirements of 10 CFR Part 32.11 and any other applicable NRC requirement.

3.12.2 No person may introduce byproduct material into a product or material knowing or having reason to believe that it will be transferred to persons exempted pursuant to 3.3.2, under 10 CFR Part 30.14 or equivalent regulations of an Agreement State, except in accordance with a license issued under 10 CFR Part 32.[8]

[8] Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

3.12.2.3 Each person licensed under 3.12.2 shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use under 3.3.2, and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of each radionuclide transferred under the

specific license shall be filed with the Department. Each report shall cover the year ending June 30, and shall be filed within 30 days thereafter. If no transfers of radioactive material have been made pursuant to 3.12.2 during the reporting period, the report shall so indicate.

*** * ***

3.12.10 Manufacture, Preparation, or Transfer for Commercial Distribution of Radioactive Drugs for Medical Use.

3.12.10.1 An application for a specific license to manufacture, prepare, or transfer for commercial distribution radioactive drugs containing radioactive material for use by persons authorized under Part 7 will be approved if:

(1) The applicant satisfies the general requirements specified in 3.9;

(2) The applicant submits evidence that the applicant is at least one of the following:

(a) Registered or licensed with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR Part 207.17(a);

*** * ***

3.13.2 In proceeding under the third party agreement, the Department shall carry out the following practices:

3.13.2.1 Such contractor shall be chosen solely by the Department.

3.13.2.2 The Department shall manage the contract.

3.13.2.3 The consultant shall be selected based on the consultant's ability relevant and applicable work experience and an absence of conflict of interest. Third party contractors will be required to execute a disclosure statement signifying they have no financial or other conflicting interest in the outcome of the project.

3.13.2.4 The Department shall specify the information to be developed and supervise the gathering, analysis and presentation of the information.

3.13.2.5 The Department shall have sole authority for approval and modification of the statement, analysis, and conclusions included in third party's report.

*** * ***

3.14.3 Whenever the Department denies an application for a new license or a license renewal, the Department will notify the applicant in writing stating the grounds for denial

3.14.3.1 Upon denial, the applicant may request a hearing pursuant to Sections 24-4-104 and 24-4-105, CRS.

*** * ***

3.17 Renewal of Licenses.

3.17.1 Applications for renewal of specific licenses shall be filed in accordance with 3.8.

3.17.2 In any case in which a licensee, not less than 30 days prior to expiration of the existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until final action by the Department.

* * *

TRANSFER OF MATERIALS

3.22 Transfer of Material.

3.22.1 No licensee shall transfer radioactive material except as authorized pursuant to 3.22.

3.22.2 Except as otherwise provided in the license and subject to the provisions of 3.22.3 and 3.22.4, any licensee may transfer radioactive material:

* * *

PART 3, SCHEDULE 3C: UNIMPORTANT QUANTITIES OF SOURCE MATERIAL AND EXEMPT ITEMS (3.2)

3C Any person is exempt from the requirements for a license set forth in section 62 of the Atomic Energy Act and from the regulations in this part 3, and parts 4 and 10, to the extent that such person receives, possesses, uses, or transfers:

* * *

3C.10 No person may initially transfer for sale or distribution a product containing source material to persons exempt under 3C.1 through 3C.10, or equivalent regulations of the NRC or an Agreement State, unless authorized by a license issued under 10 CFR Part 40.52 by the NRC to initially transfer such products for sale or distribution.

3C.10.1 Persons authorized to manufacture, process, or produce these materials or products containing source material by the Department, an Agreement State, and persons who import finished products or parts, for sale or distribution must be authorized by a license issued under 10 CFR Part 40.52 by the NRC for distribution only and are exempt from the requirements of part 4, part 10, and 3.9.1 and 3.9.2.

3C.11 Except for persons who apply radioactive material to, or persons who incorporate radioactive material into, the following products, any person is exempt from these regulations to the extent that the person receives, possesses, uses, transfers, owns, or acquires the following products[16]:

[16] Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

3C.11.1 Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified radiation dose rate:

3C.11.1.1 925 MBq (25 mCi) of tritium per timepiece.

3C.11.1.2 185 MBq (5 mCi) of tritium per hand.

3C.11.1.3 555 MBq (15 mCi) of tritium per dial (bezels when used shall be considered as part of the dial).

3C.11.1.4 3.7 MBq (100 µCi) of promethium-147 per watch or 7.4 MBq (200 µCi) of promethium-147 per any other timepiece.

3C.11.1.5 0.74 MBq (20 µCi) of promethium-147 per watch hand or 1.48 MBq (40 µCi of promethium-147 per other timepiece hand.

3C.11.1.6 2.22 MBq (60 µCi) of promethium-147 per watch dial or 4.44 MBq (120 µCi) of promethium-147 per other timepiece dial (bezels when used shall be considered as part of the dial).

3C.11.1.7 The radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

(1) For wristwatches, 1 µGy (0.1 mrad) per hour at 10 centimeters from any surface.

(2) For pocket watches, 1 µGy (0.1 mrad) per hour at 1 centimeter from any surface.

(3) For any other timepiece, 2 µGy (0.2 mrad) per hour at 10 centimeters from any surface.

3C.11.1.8 37 kBq (1 µCi) of radium-226 per timepiece in intact timepieces manufactured prior to November 30, 2007;

*** * ***

3C.13 Gas and aerosol detectors containing radioactive material.

3C.13.1 Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from the requirements for a license set forth in the Act and from the regulations in 3, 4, 5, 7, 10, 16, and 19 to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect health, safety, or property and manufactured, processed, produced, or initially transferred in accordance with a specific license issued by the NRC[18] pursuant to section 32.26 of 10 CFR Part 32, which license authorizes the initial transfer of the detectors to persons who are exempt from regulatory requirements. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by the NRC or an Agreement State under comparable provisions to 10 CFR Part 32.26 authorizing distribution to persons exempt from regulatory requirements.

[18] Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

*** * ***

3C.15 Certain industrial devices

3C.15.1 Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the requirements for a license set forth in the Act and from the regulations in parts 3, 4, 5, 7, 10, 16, and 19 to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued by the NRC under 10 CFR Part 32.30, which license authorizes the initial transfer of the device for use under this section. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

3C.15.2 Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material for use under 3C.15.1, should apply for an NRC license under 10 CFR Part 32.30 and for a certificate of registration in accordance with 10 CFR Part 32.210.

* * *

3F.2 Financial Test

3F.2.1 To pass the financial test, the parent company must meet the criteria of either 3F.2.1.1 or 3F.2.1.2 of this Appendix:

3F.2.1.1 The parent company must have:

(1) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and ratio of current assets to current liabilities greater than 1.5; and

(2) Net working capital and tangible net worth each at least ten times the current decommissioning cost estimates (or prescribed amount if a certification is used); and

(3) Tangible net worth of at least $10 million; and

(4) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the current decommissioning cost estimates (or prescribed amount if a certification is used).

3F.2.1.2 The parent company must have:

(1) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or AAA, AA, A, or BAA as issued by Moody's; and

(2) Tangible net worth at least ten times the current decommissioning cost estimate (or prescribed amount if a certification is used); and

(3) Tangible net worth of at least $10 million; and

(4) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the current decommissioning cost estimates (or prescribed amount if certification is used).

3F.2.2 The parent company's independent certified public accountant must have compared the data used by the parent company in the financial test, which is derived from independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the Department within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

3F.2.3 Follow-up

3F.2.3.1. After the initial financial test, the parent company must repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

3F.2.3.2 If the parent company no longer meets the requirements of 3F.2.1 of this section, the licensee must send notice to the Department of intent to establish alternate financial assurance as specified in the Department's regulations.

(1) The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the parent company no longer meets the financial test requirements.

(2) The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

* * *

PART 3, APPENDIX 3G: CRITERIA RELATING TO USE OF FINANCIAL TESTS AND SELF-GUARANTEES FOR PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING

3G.1 Introduction

3G.1.1 An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning, based on furnishing its own guarantee that funds will be available for decommissioning costs, and on a demonstration that the company passes the financial test in 3G.2 of this Appendix.

3G.1.1.1 The terms of this self-guarantee are in 3G.3 of this Appendix.

3G.1.1.2 This Appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

3G.2 Financial Test

3G.2.1 To pass the financial test, a company must meet the all of the following criteria:

* * *

3G.3 Company Self-Guarantee

3G.3.1 The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

* * *

[NO FURTHER CHANGES TO THE RULE BEYOND THIS POINT]

PUBLICATION INSTRUCTIONS FOR
6 CCR 1007-1, Part 3,
Licensing of radioactive materials

Adopted by the Board of Health on October 18, 2023

[Publication Instructions: STRIKE the text from the beginning of the rule through the title of the rule below the solid line, and INSERT the revised/updated/added text below to incorporate updates to the adoption and effective date.]

[* * * indicates unaffected sections of the rule]

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

RADIATION CONTROL - LICENSING OF RADIOACTIVE MATERIAL

6 CCR 1007-1 PART 03

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

Adopted by the Board of Health on October 18, 2023; effective December 15, 2023.

LICENSING OF RADIOACTIVE MATERIAL

* * *

[Publication Instructions: After 3.1.4.3(6) STRIKE 3.1.4.3 through 3.1.4.5(2), and INSERT the revised text below to update the incorporation by reference section, consistent with other recent rulemaking efforts.]

Published material incorporated by reference.

3.1.4.3 Throughout this Part 3, federal regulations, state regulations, and standards or guidelines of outside organizations have been adopted and incorporated by reference. Unless a prior version of the incorporated material is otherwise specifically indicated, the materials incorporated by reference cited herein include only those versions that were in effect as of the most recent effective date of this Part 3 (December 2023), and not later amendments or editions of the incorporated material.

3.1.4.4 Materials incorporated by reference are available for public inspection, and copies (including certified copies) can be obtained at reasonable cost, during normal business hours from the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246. Additionally, https://cdphe.colorado.gov/hm/radregs identifies where the incorporated federal and state regulations are available to the public on the internet at no cost. A copy of the materials incorporated in this Part is available for public inspection at the state publications depository and distribution center.

3.1.4.5 Availability from Source Agencies or Organizations.

(1) All federal agency regulations incorporated by reference herein are available at no cost in the online edition of the Code of Federal Regulations (CFR) hosted by the U.S. Government Printing Office, online at https://www.govinfo.gov/app/collection/cfr/.

(2) All state regulations incorporated by reference herein are available at no cost in the online edition of the Code of Colorado Regulations (CCR) hosted by the Colorado Secretary of State's Office, online at https://www.sos.state.co.us/CCR/Welcome.do.

* * *

[Publication Instructions: STRIKE the current Section 3.3.2 through 3.3.2.2., and INSERT the revised text below to incorporate "Part" in the reference to federal rules in 10 CFR.]

3.3.2 Exempt Quantities.

3.3.2.1 Except as provided in 3.3.2.3 and 3.3.2.4, any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities each of which does not exceed the applicable quantity set forth in Schedule 3B.

3.3.2.2 Any person who possesses radioactive material received or acquired under the general license formerly provided under 10 CFR Part 31.4 before September 25, 1971 is exempt from the requirements for a license set forth in this part to the extent that such person possesses, uses, transfers or owns such radioactive material.

* * *

[Publication Instructions: STRIKE the current Section 3.5.2 through 3.5.2.1., and INSERT the revised text below.]

3.5.2 Any person who receives, possesses, uses or transfers source material in accordance with the general license in 3.5.1:

3.5.2.1 Is prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the Department, NRC, or an Agreement State in a specific license.

* * *

[Publication Instructions: STRIKE the current Section 3.5.8 through 3.5.8.2(2), and INSERT the revised text below to make minor wording changes and to make the rule more gender neutral.]

3.5.8 Depleted Uranium in Industrial Products and Devices.

3.5.8.1 A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of 3.5.8.2, 3.5.8.3, and 3.5.8.4, depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

3.5.8.2 The general license in 3.5.8.1 applies only to industrial products or devices which have been manufactured either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to 3.12.13 or in accordance with a specific license issued to the manufacturer by the NRC or an Agreement State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the NRC or an Agreement State.

(1) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by 3.5.8.1 shall file Department Form R-52, “Registration Certificate - Use of Depleted Uranium Under General License”, with the Department.

(a) The form shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium.

(b) The general licensee shall furnish on Department Form R-52 the following information and such other information as may be required by that form:

(i) Name and address of the general licensee;

(ii) A statement that the general licensee has developed and will maintain procedures designed to establish physical control over the depleted uranium described in 3.5.8.1 and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(iii) Name and title, address, and telephone number of the individual duly authorized to act for and on behalf of the general licensee in supervising the procedures identified in 3.5.8.2(1)(b)(ii).

(2) The general licensee possessing or using depleted uranium under the general license established by 3.5.8.1 shall report in writing to the Department any changes in information previously furnished using Department Form R-52, “Registration Certificate - Use of Depleted Uranium Under General License”. The report shall be submitted within 30 days after the effective date of such change.

* * *

[Publication Instructions: STRIKE the current Section 3.6.4.2 through 3.6.4.2(2), and INSERT the revised text below to replace “By” with “The” in 3.6.4.2(1)(b).]

3.6.4.2 The general license in 3.6.4.1 applies only to radioactive material contained in devices which have been:

(1) Manufactured or initially transferred and labeled for distribution to persons generally licensed in accordance with the specifications contained in a specific license issued by:

(a) The Department pursuant to 3.12.4 or

(b) The NRC or an Agreement State[4]

[4] Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 CFR 179.21.

(2) Received from one of the specific licensees described in 3.6.4.2(1) or through a transfer made under 3.6.4.3(8).

* * *

[Publication Instructions: STRIKE the current Section 3.6.5.1(2), and INSERT the revised text below to add "the" before "NRC".]

(2) Each device has been manufactured, assembled or imported in accordance with a specific license issued by the NRC or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the Department or any Agreement State to the manufacturer or assembler of such device pursuant to licensing requirements equivalent to those in Section 32.53 of 10 CFR Part 32.

* * *

[Publication Instructions: STRIKE the current Section 3.6.7 through 3.6.8, and INSERT the revised and newly added text below to make minor wording changes, incorporate gender neutrality, and add new language in Section 3.6.8 which provides a general license for certain radium-226 items, consistent with federal rule in 10 CFR Part 31.12.]

3.6.7 Calibration and Reference Sources.

3.6.7.1 A general license is hereby issued to those persons listed below to own, receive, acquire, possess, use, and transfer, in accordance with the provisions of 3.6.7.4 and 3.6.7.5, americium-241 in the form of calibration or reference sources:

(1) Any person who holds a specific license issued by the Department which authorizes receipt, possession, use, and transfer of radioactive material; and

(2) Any person who holds a specific license issued by the NRC which authorizes receipt, possession, use, and transfer of special nuclear material.

3.6.7.2 A general license is hereby issued to own, receive, possess, use, and transfer plutonium in the form of calibration or reference sources in accordance with the provisions of 3.6.7.4 and 3.6.7.5 to any person who holds a specific license issued by the Department which authorizes the licensee to receive, possess, use, and transfer radioactive material.

3.6.7.3 A general license is hereby issued to own, receive, possess, use, and transfer radium 226 in the form of calibration or reference sources in accordance with the provisions of 3.6.7.4 and 3.6.7.5 to any person who holds a specific license issued by the Department which authorizes the licensee to receive, possess, use, and transfer radioactive material.

3.6.7.4 The general licenses in 3.6.7.1, 3.6.7.2, and 3.6.7.3 apply only to calibration or reference sources which have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued to the manufacturer or importer of the sources by the NRC pursuant to Section 32.57 of 10 CFR Part 32 or Section 70.39 of 10 CFR Part 70 or which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the Department or any Agreement State pursuant to licensing requirements equivalent to those contained in Section 32.57 of 10 CFR Part 32 or Section 70.39 of 10 CFR Part 70.

3.6.7.5 The general licenses provided in 3.6.7.1, 3.6.7.2, and 3.6.7.3 are subject to the provisions of 1.4 through 1.9, 3.15, 3.22, 3.23 and 3.24, and Parts 4 and 10. In addition, persons who own, receive, acquire, possess, use, or transfer one or more calibration or reference sources pursuant to these general licenses, shall:

(1) Not possess at any one time, at any one location of storage or use, more than 185 kBq (5 µCi) of americium-241, 185 kBq (5 µCi) of plutonium, or 185 kBq (5 µCi) of radium-226 in such sources;

(2) Not receive, possess, use, or transfer such source unless the source, or the storage container, bears a label which includes one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, as appropriate:

(a) The receipt, possession, use and transfer of this source, Model ___, Serial No.__ are subject to a general license and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL - THIS SOURCE CONTAINS (AMERICIUM-241) (PLUTONIUM) (RADIUM-226).[5] DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

[5] Showing only the name of the appropriate material.

_____

Name of manufacturer or importer

(3) Not transfer, abandon, or dispose of such source except by transfer to a person authorized by a license from the Department, NRC or an Agreement State to receive the source;

(4) Store such source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241, plutonium, or radium-226 which might otherwise escape during storage; and

(5) Not use such source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

3.6.7.6 These general licenses do not authorize the manufacture, import, or export of calibration or reference sources containing americium-241, plutonium or radium-226.

3.6.8 General license for certain items and self-luminous products containing radium-226.

3.6.8.1 A general license is hereby issued to any person to acquire, receive, possess, use, or transfer, in accordance with the provisions of 3.6.8.2 through 3.6.8.4., radium-226 contained in the following products manufactured prior to November 30, 2007.

(1) Antiquities originally intended for use by the general public.

For the purposes of 3.6.8.1(1), antiquities mean products originally intended for use by the general public and distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads.

(2) Intact timepieces containing greater than 0.037 MBq (1 µCi), nonintact timepieces, and timepiece hands and dials no longer installed in timepieces.

(3) Luminous items installed in air, marine, or land vehicles.

(4) All other luminous products, provided that no more than 100 items are used or stored at the same location at any one time.

(5) Small radium sources containing no more than 0.037 MBq (1 µCi) of radium-226.

For the purposes of 3.6.8.1(5), ‘‘small radium sources’’ means discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations (such as cloud chambers and spinthariscopes), electron tubes, lightning rods, ionization sources, static eliminators, or as designated by the NRC.

3.6.8.2 Persons who acquire, receive, possess, use, or transfer radioactive material under the general license issued in 3.6.8.1 are exempt from the provisions of Parts 4 and 10 of these regulations, to the extent that the receipt, possession, use, or transfer of radioactive material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to any such person specifically licensed under this Part.

3.6.8.3 Any person who acquires, receives, possesses, uses, or transfers radioactive material in accordance with the general license in 3.6.8.1 shall:

(1) Notify the Department should there be any indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event, and the remedial action taken, must be furnished to the Department within 30 days.

(2) Not abandon products containing radium-226. The product, and any radioactive material from the product, may only be disposed of according to Part 4, Section 4.39.2 of these regulations or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the NRC or an Agreement State.

(3) Not export products containing radium-226 except in accordance with 10 CFR Part 110.

(4) Dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with any Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 by a specific license issued under this Part, or equivalent regulations of the NRC or an Agreement State, or as otherwise approved by the NRC or an Agreement State.

(5) Respond to written requests from the Department to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the Department, a written justification for the request.

3.6.8.4. The general license in 3.6.8.1 does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226, except that timepieces may be disassembled and repaired.

* * *

[Publication Instructions: STRIKE the current Section 3.6.9.4 through 3.6.9.5, and INSERT the revised text below to make a minor wording correction and incorporate gender neutrality.]

3.6.9.4 The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to 3.6.9.1:

(1) Except as prepackaged units which are labeled in accordance with the provisions of an applicable specific license issued pursuant to 3.12.8 or in accordance with

the provisions of a specific license issued by the NRC or any Agreement State which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), iron-59, selenium-75, cobalt-57, or Mock Iodine-125 to persons generally licensed under 3.6.9 or its equivalent; and

(2) Unless one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(a) This radioactive material shall be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for *in vitro* clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or an Agreement State.

_____

Name of manufacturer

3.6.9.5 The physician, veterinarian, clinical laboratory or hospital possessing or using radioactive material under the general license of 3.6.9.1 shall report in writing to the Department, any changes in the information previously furnished using the "Certificate - *In Vitro* Testing with Radioactive Material Under General License", Department Form R-27. The report shall be furnished within 30 days after the effective date of such change.

* * *

[Publication Instructions: STRIKE the current Section 3.8.9., and INSERT the revised text below to include "Part" when referencing federal rule.]

3.8.9 Except as provided in 3.8.9.3, 3.8.9.4, and 3.8.9.5, an application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source must either:

3.8.9.1 Identify the source or device by manufacturer and model number as registered with the NRC under 10 CFR Part 32.210 or with an Agreement State, or for a source or a device containing radium-226 or accelerator produced radioactive material with an Agreement State under provisions comparable to 10 CFR Part 32.210; or

3.8.9.2 Contain the information identified in 3.12.14.3; or

3.8.9.3 For sources or devices manufactured before October 23, 2012 that are not registered with the NRC under 10 CFR Part 32.210 or with an Agreement State, and for which the applicant is unable to provide all categories of information specified in 3.12.14.3, the application must include:

* * *

[Publication Instructions: STRIKE the current Section 3.8.10., and INSERT the reformatted and realigned text below. There are no changes to the text of the rule in this section.]

3.8.10 An application from a medical facility, educational institution, or Federal facility to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to licensees

in its consortium authorized for medical use under Part 7 of these regulations or equivalent Agreement State requirements shall include:

3.8.10.1 A request for authorization for the production of PET radionuclides or evidence of an existing license issued under this Part or Agreement State requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides.

3.8.10.2 Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in 3.12.10.1(2).

3.8.10.3 Identification of individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in 3.12.10.2(2).

3.8.10.4 Information identified in 3.12.10.1(3) on the PET drugs to be noncommercially transferred to members of its consortium.

* * *

[Publication Instructions: STRIKE the current Section 3.9.6.3., and INSERT the revised text below to address a grammatical error.]

3.9.6.3 Waste collectors and waste processors, as defined in Part 4, Appendix D, shall establish a Department-approved decommissioning funding plan to assure the availability of funds for decommissioning activities conducted over the life of the licensed facility.

* * *

[Publication Instructions: STRIKE the current Section 3.12. through 3.12.2.3, and INSERT the revised text below to incorporate "Part" when referencing federal rule.]

3.12 Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices which Contain Radioactive Material.

3.12.1 A licensee authorized to introduce radioactive material into a product or material owned by or in the possession of the licensee or another to be transferred to persons exempt under 3.3.1.1 shall meet the requirements of 10 CFR Part 32.11 and any other applicable NRC requirement.

3.12.2 No person may introduce byproduct material into a product or material knowing or having reason to believe that it will be transferred to persons exempted pursuant to 3.3.2, under 10 CFR Part 30.14 or equivalent regulations of an Agreement State, except in accordance with a license issued under 10 CFR Part 32.[8]

[8] Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

3.12.2.3 Each person licensed under 3.12.2 shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use under 3.3.2, and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the Department. Each report shall cover the year ending June 30, and shall be filed within 30 days thereafter. If no transfers of radioactive material have been made pursuant to 3.12.2 during the reporting period, the report shall so indicate.

* * *

[Publication Instructions: STRIKE the current Section 3.12.10 through 3.12.10.1(2)(a)., and INSERT the revised text below to correct a cross-reference error in federal rule.]

3.12.10 Manufacture, Preparation, or Transfer for Commercial Distribution of Radioactive Drugs for Medical Use.

3.12.10.1 An application for a specific license to manufacture, prepare, or transfer for commercial distribution radioactive drugs containing radioactive material for use by persons authorized under Part 7 will be approved if:

(1) The applicant satisfies the general requirements specified in 3.9;

(2) The applicant submits evidence that the applicant is at least one of the following:

(a) Registered or licensed with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR Part 207.17(a);

* * *

[Publication Instructions: STRIKE the current Section 3.13.2. through 3.13.2.5, and INSERT the realigned/reformatted text below. There are no changes to the text of this section.]

3.13.2 In proceeding under the third party agreement, the Department shall carry out the following practices:

3.13.2.1 Such contractor shall be chosen solely by the Department.

3.13.2.2 The Department shall manage the contract.

3.13.2.3 The consultant shall be selected based on the consultant's ability relevant and applicable work experience and an absence of conflict of interest. Third party contractors will be required to execute a disclosure statement signifying they have no financial or other conflicting interest in the outcome of the project.

3.13.2.4 The Department shall specify the information to be developed and supervise the gathering, analysis and presentation of the information.

3.13.2.5 The Department shall have sole authority for approval and modification of the statement, analysis, and conclusions included in third party's report.

* * *

[Publication Instructions: STRIKE the current Section 3.14.3. through 3.14.3.1, and INSERT the reformatted/realigned text below. There are no changes to the text of this provision]

3.14.3 Whenever the Department denies an application for a new license or a license renewal, the Department will notify the applicant in writing stating the grounds for denial

3.14.3.1 Upon denial, the applicant may request a hearing pursuant to Sections 24-4-104 and 24-4-105, CRS.

* * *

[Publication Instructions: STRIKE the current Section 3.17 through 3.17.2., and INSERT the revised text below to make the rule more gender neutral.]

3.17 Renewal of Licenses.

3.17.1 Applications for renewal of specific licenses shall be filed in accordance with 3.8.

3.17.2 In any case in which a licensee, not less than 30 days prior to expiration of the existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until final action by the Department.

* * *

[Publication Instructions: Following the unnumbered "TRANSFER OF MATERIALS" header, STRIKE the current Section 3.22., and INSERT the revised text below to make the rule more gender neutral.]

3.22 Transfer of Material.

3.22.1 No licensee shall transfer radioactive material except as authorized pursuant to 3.22.

3.22.2 Except as otherwise provided in the license and subject to the provisions of 3.22.3 and 3.22.4, any licensee may transfer radioactive material:

* * *

[Publication Instructions: Prior to final publication, ensure Schedule 3C is formatted to begin at the top of the page. There are no changes to the text of the header below.]

PART 3, SCHEDULE 3C: UNIMPORTANT QUANTITIES OF SOURCE MATERIAL AND EXEMPT ITEMS (3.2)

3C Any person is exempt from the requirements for a license set forth in section 62 of the Atomic Energy Act and from the regulations in this part 3, and parts 4 and 10, to the extent that such person receives, possesses, uses, or transfers:

* * *

[Publication Instructions: In Schedule 3C, STRIKE Section 3C.10 through 3C.11.1.8, and INSERT the revised/reformatted text below to make minor wording corrections consistent with federal rule.]

3C.10 No person may initially transfer for sale or distribution a product containing source material to persons exempt under 3C.1 through 3C.10, or equivalent regulations of the NRC or an Agreement State, unless authorized by a license issued under 10 CFR Part 40.52 by the NRC to initially transfer such products for sale or distribution.

3C.10.1 Persons authorized to manufacture, process, or produce these materials or products containing source material by the Department, an Agreement State, and persons who import finished products or parts, for sale or distribution must be authorized by a license issued under 10 CFR Part 40.52 by the NRC for distribution only and are exempt from the requirements of part 4, part 10, and 3.9.1 and 3.9.2.

3C.11 Except for persons who apply radioactive material to, or persons who incorporate radioactive material into, the following products, any person is exempt from these regulations to the extent that the person receives, possesses, uses, transfers, owns, or acquires the following products[16]:

[16] Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

3C.11.1 Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified radiation dose rate:

3C.11.1.1 925 MBq (25 mCi) of tritium per timepiece.

3C.11.1.2 185 MBq (5 mCi) of tritium per hand.

3C.11.1.3 555 MBq (15 mCi) of tritium per dial (bezels when used shall be considered as part of the dial).

3C.11.1.4 3.7 MBq (100 µCi) of promethium-147 per watch or 7.4 MBq (200 µCi) of promethium-147 per any other timepiece.

3C.11.1.5 0.74 MBq (20 µCi) of promethium-147 per watch hand or 1.48 MBq (40 µCi of promethium-147 per other timepiece hand.

3C.11.1.6 2.22 MBq (60 µCi) of promethium-147 per watch dial or 4.44 MBq (120 µCi) of promethium-147 per other timepiece dial (bezels when used shall be considered as part of the dial).

3C.11.1.7 The radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

(1) For wristwatches, 1 µGy (0.1 mrad) per hour at 10 centimeters from any surface.

(2) For pocket watches, 1 µGy (0.1 mrad) per hour at 1 centimeter from any surface.

(3) For any other timepiece, 2 µGy (0.2 mrad) per hour at 10 centimeters from any surface.

3C.11.1.8 37 kBq (1 µCi) of radium-226 per timepiece in intact timepieces manufactured prior to November 30, 2007;

* * *

[Publication Instructions: In Schedule 3C, STRIKE the current Section 3C.13. through 3C.13.1 (including footnote 18), and INSERT the revised/formatted text below. Prior to final publication, ensure that the reference to footnote 18 in 3C.13.1 (NRC[18]) is formatted as a superscript.]

3C.13 Gas and aerosol detectors containing radioactive material.

3C.13.1 Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from the requirements for a license set forth in the Act and from the regulations in 3, 4, 5, 7, 10, 16, and 19 to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect health, safety, or property and manufactured, processed, produced, or initially transferred in accordance with a specific license issued by the NRC[18] pursuant to section 32.26 of 10 CFR Part 32, which license authorizes the initial transfer of the detectors to persons who are exempt from regulatory requirements. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by the NRC or an Agreement State under

comparable provisions to 10 CFR Part 32.26 authorizing distribution to persons exempt from regulatory requirements.

[18] Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

* * *

[Publication Instructions: In Schedule 3C, STRIKE the current Section 3C.15 through 3C.15.2, and INSERT the revised text below to make minor wording changes.]

3C.15 Certain industrial devices

3C.15.1 Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the requirements for a license set forth in the Act and from the regulations in parts 3, 4, 5, 7, 10, 16, and 19 to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued by the NRC under 10 CFR Part 32.30, which license authorizes the initial transfer of the device for use under this section. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

3C.15.2 Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material for use under 3C.15.1, should apply for an NRC license under 10 CFR Part 32.30 and for a certificate of registration in accordance with 10 CFR Part 32.210.

* * *

[Publication Instructions: In Schedule 3F, STRIKE the current Section 3F.2.1, and INSERT the revised text below to correct a cross-reference error.]

3F.2.1 To pass the financial test, the parent company must meet the criteria of either 3F.2.1.1 or 3F.2.1.2 of this Appendix:

* * *

[Publication Instructions: In Schedule 3F, STRIKE the current Section 3F.2.3.2 through 3F.2.3.2(2), and INSERT the revised text below to correct a cross-reference error.]

3F.2.3.2 If the parent company no longer meets the requirements of 3F.2.1 of this section, the licensee must send notice to the Department of intent to establish alternate financial assurance as specified in the Department's regulations.

(1) The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the parent company no longer meets the financial test requirements.

(2) The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

* * *

[Publication Instructions: In Schedule 3G, STRIKE the current header through Section 3G.1.1.2, and INSERT the revised text below to correct cross-reference errors. Prior to final publication, ensure that the 1st page of Appendix 3G begins at the top of the page.]

PART 3, APPENDIX 3G: CRITERIA RELATING TO USE OF FINANCIAL TESTS AND SELF-GUARANTEES FOR PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING

3G.1 Introduction

3G.1.1 An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning, based on furnishing its own guarantee that funds will be available for decommissioning costs, and on a demonstration that the company passes the financial test in 3G.2 of this Appendix.

3G.1.1.1 The terms of this self-guarantee are in 3G.3 of this Appendix.

3G.1.1.2 This Appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

* * *

[NO FURTHER CHANGES TO THE RULE BEYOND THIS POINT]

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Tracking number: 2023-00590

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

Hazardous Materials and Waste Management Division

on 10/18/2023

6 CCR 1007-1 Part 03

RADIATION CONTROL - LICENSING OF RADIOACTIVE MATERIAL

The above-referenced rules were submitted to this office on 10/25/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 06, 2023 09:04:38

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-1 Part 04

Rule title

6 CCR 1007-1 Part 04 RADIATION CONTROL - STANDARDS FOR PROTECTION AGAINST RADIATION 1 - eff 12/15/2023

Effective date

12/15/2023

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

RADIATION CONTROL - STANDARDS FOR PROTECTION AGAINST RADIATION

6 CCR 1007-1 Part 04

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

Adopted by the Board of Health on October 18, 2023; effective December 15, 2023.

PART 4: STANDARDS FOR PROTECTION AGAINST RADIATION

[* * * DENOTES UNAFFECTED SECTIONS/PROVISIONS IN THE DRAFT RULE]

* * *

STANDARDS FOR PROTECTION AGAINST RADIATION

4.1 Purpose and Scope

4.1.1 Authority.

4.1.1.1 Rules and regulations set forth herein are adopted pursuant to the provisions of Sections 25-1-108, 25-1.5-101(1)(k) and (1)(l), and 25-11-104, CRS.

4.1.2 Basis and Purpose.

4.1.2.1 A statement of basis and purpose of these regulations is incorporated as part of these regulations; a copy may be obtained from the Department.

4.1.3 Scope.

4.1.3.1 This Part 4 establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses or registrations issued by the Department.

4.1.3.2 The requirements of Part 4 are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in Part 4. However, nothing in Part 4 shall be construed as limiting actions that may be necessary to protect health and safety.

4.1.4 Applicability.

4.1.4.1 Except as specifically provided in other parts of these regulations, Part 4 applies to persons licensed or registered by the Department to receive, possess, use, transfer, or dispose of sources of radiation. The limits in Part 4 do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with 7.26, or to exposure from voluntary participation in medical research programs.

4.1.5 Published Material Incorporated by Reference.

4.1.5.1 Throughout this Part 4, federal regulations, state regulations, and standards or guidelines of outside organizations have been adopted and incorporated by reference. Unless a prior version of the incorporated material is otherwise specifically indicated, the materials incorporated by reference cited herein include only those versions that were in effect as of the most recent effective date of this Part 4 (December 2023), and not later amendments or editions of the incorporated material.

4.1.5.2 Materials incorporated by reference are available for public inspection, and copies (including certified copies) can be obtained at reasonable cost, during normal business hours from the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246. Additionally, https://www.colorado.gov/hm/radregs identifies where the incorporated material is available to the public on the internet at no cost. Due to copyright restrictions, certain materials incorporated in this Part are available for public inspection at the state publications depository and distribution center.

4.1.5.3 Availability from Source Agencies or Organizations.

(1) All federal agency regulations incorporated by reference herein are available at no cost in the online edition of the Code of Federal Regulations (CFR) hosted by the U.S. Government Publishing Office, online at https://www.govinfo.gov/app/collection/cfr/.

(2) All state regulations incorporated by reference herein are available at no cost in the online edition of the Code of Colorado Regulations (CCR) hosted by the Colorado Secretary of State's Office, online at https://www.sos.state.co.us/CCR/Welcome.do.

4.2 Definitions.

4.2.1 Reserved.

4.3 Implementation.

4.3.1 Any existing license or registration condition that is more restrictive than Part 4 remains in force until there is an amendment or renewal of the license or registration.

4.4 Reserved.

RADIATION PROTECTION PROGRAMS

4.5 Radiation Protection Programs.

4.5.1 Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of Part 4. See 4.41 for recordkeeping requirements relating to these programs.

4.5.2 The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).

4.5.3 The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation.

4.5.4 To implement the ALARA requirements of 4.5.2 and notwithstanding the requirements in 4.14 of this part, a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its decay products, shall be established by licensees, such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 0.1 millisievert (10 mrem) per year from these emissions. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report such event as provided in 4.53.2 and promptly take appropriate corrective action to ensure against recurrence.

OCCUPATIONAL DOSE LIMITS

4.6 Occupational Dose Limits for Adults.

4.6.1 The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to 4.11, to the following dose limits:

4.6.1.1 An annual limit, which is the more limiting of:

(1) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(2) The sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.5 Sv (50 rem).

4.6.1.2 The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities, which are:

(1) A lens dose equivalent of 0.15 Sv (15 rem), and

(2) A shallow dose equivalent of 0.5 Sv (50 rem) to the skin of the whole body or to the skin of any extremity.

4.6.2 Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See 4.11.5.1 and 4.11.5.2.

4.6.3 Assigned dose equivalent.

4.6.3.1 When the external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the NRC.

4.6.3.2 The assigned deep dose equivalent must be for the part of the body receiving the highest exposure.

4.6.3.3 The assigned shallow dose equivalent must be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure.

4.6.3.4 The deep-dose equivalent, lens dose equivalent, and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

4.6.3.5 In the case of occupational exposures to x-rays with accelerating voltages of less than 145 kVp and where the worker utilizes lead garment protection, the registrant may calculate the assigned dose equivalent using methods discussed in NRC Regulatory Information Summary (RIS) 2002-06[1], other methods as specifically approved by the Department, or by use of the following equation:

1 NRC RIS 2002-06, Evaluating Occupational Dose For Individuals Exposed To NRC-licensed Material And Medical X-Rays, April 16, 2002 (http://www.nrc.gov/; ML021000613).

(1) Lead apron and no thyroid collar:

assigned deep dose equivalent = 0.06 x (collar dose – waist dose) + waist dose

(2) Lead apron and thyroid collar:

assigned deep dose equivalent = 0.02 x (collar dose – waist dose) + waist dose

4.6.4 Derived air concentration (DAC) and annual limit on intake (ALI) values are presented in Table 4B1 of Appendix 4B and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See 4.46.

4.6.5 Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity. See footnote 3 of Appendix 4B.

4.6.6 The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See 4.10.3.1 and 4.10.5.

* * *

4.10 Determination of Prior Occupational Dose.

4.10.1 For each individual who is likely to receive, in a year, an occupational dose requiring monitoring pursuant to 4.18, the licensee or registrant shall determine the occupational radiation dose received during the current year.

4.10.2 Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

4.10.2.1 The internal and external doses from all previous planned special exposures; and

4.10.2.2 All doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

4.10.3 In complying with the requirements of 4.10.1 or 4.10.2, a licensee or registrant may:

4.10.3.1 Accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and

4.10.3.2 Accept, as the record of cumulative radiation dose, an up-to-date Department Form R-16, Cumulative Occupational Exposure History, or equivalent, signed by the individual and countersigned by an appropriate official of the most recent

employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant; and

4.10.3.3 Obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

4.10.4 Record of Exposure History.

4.10.4.1 The licensee or registrant shall record the exposure history, as required by 4.10.1 or 4.10.2, on Department Form R-16, or other clear and legible record, of all the information required on that form. The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing Department Form R-16 or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on Department Form R-16 or equivalent indicating the periods of time for which data are not available.

4.10.4.2 Licensees or registrants are not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed pursuant to the Regulations in Part 4 in effect before January 1, 1994. Further, occupational exposure histories obtained and recorded before January 1, 1994 on Department Form R-16 or equivalent, would not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

4.10.5 If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

4.10.5.1 In establishing administrative controls pursuant to 4.6.6 for the current year, that the allowable dose limit for the individual is reduced by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

4.10.5.2 That the individual is not available for planned special exposures.

4.10.6 The licensee or registrant shall retain the records on Department Form R-16 or equivalent until the Department terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing Department Form R-16 or equivalent for 3 years after the record is made.

4.11 Planned Special Exposures.

A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in 4.6 provided that each of the following conditions in 4.11.1 through 4.11.7 is satisfied:

4.11.1 The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated to result from the planned special exposure are unavailable or impractical.

4.11.2 The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

4.11.3 Before a planned special exposure, the licensee or registrant ensures that each individual involved is:

4.11.3.1 Informed of the purpose of the planned operation; and

4.11.3.2 Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

4.11.3.3 Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

4.11.4 Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by 4.10.2 during the lifetime of the individual for each individual involved.

4.11.5 Subject to 4.6.2, the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

4.11.5.1 The numerical values of any of the dose limits in 4.6.1 in any year; and

4.11.5.2 Five times the annual dose limits in 4.6.1 during the individual's lifetime.

4.11.6 The licensee or registrant maintains records of the conduct of a planned special exposure in accordance with 4.45 and submits a written report in accordance with 4.54.

4.11.7 The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to 4.6.1 but shall be included in evaluations required by 4.11.4 and 4.11.5.

4.12 Occupational Dose Limits for Minors.

The annual occupational dose limits for minors are 10 percent of the annual occupational dose limits specified for adult workers in 4.6.

4.13 Dose Equivalent to an Embryo/Fetus.

4.13.1 The licensee or registrant shall ensure that the dose equivalent to an embryo/fetus during the entire pregnancy, due to the occupational exposure of a declared pregnant woman, does not exceed 5 mSv (0.5 rem). See 4.46 for recordkeeping requirements.

4.13.2 The licensee or registrant shall make efforts to avoid substantial variation[2] above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in 4.13.1.

2 The National Council on Radiation Protection and Measurements recommended in NCRP Report No. 91 “Recommendations on Limits for Exposure to Ionizing Radiation” (June 1, 1987) that no more than 0.5 mSv (0.05 rem) to the embryo/fetus be received in any one month.

4.13.3 The dose equivalent to an embryo/fetus is the sum of:

4.13.3.1 The deep dose equivalent to the declared pregnant woman; and

4.13.3.2 The dose equivalent to the embryo/fetus resulting from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

4.13.4 If the dose equivalent to the embryo/fetus is found to have exceeded 5 mSv (0.5 rem), or is within 0.5 mSv (0.05 rem) of this dose, by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with 4.13.1 if the additional dose equivalent to the embryo/fetus does not exceed 0.5 mSv (0.05 rem) during the remainder of the pregnancy.

* * *

4.18 Conditions Requiring Individual Monitoring of External and Internal Occupational Dose.

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of Part 4. As a minimum:

4.18.1 Each licensee or registrant shall monitor occupational exposure to radiation from licensed and unlicensed radiation sources under the control of the licensee or the registrant and shall supply and require the use of individual monitoring devices by:

4.18.1.1 Adults likely to receive, in 1 year from sources external to the body, a dose in excess of 10 percent of the limits in 4.6.1;

4.18.1.2 Minors likely to receive, in 1 year from radiation sources external to the body, a deep dose equivalent in excess of 1 mSv (0.1 rem), a lens dose equivalent in excess of 1.5 mSv (0.15 rem), or a shallow dose equivalent to the skin or to the extremities in excess 5 mSv (0.5 rem);

4.18.1.3 Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 1 mSv (0.1 rem)[3]; and

3 All of the occupational doses in 4.6 continue to be applicable to the declared pregnant worker as long as the embryo/fetus dose limit is not exceeded.

4.18.1.4 Individuals entering a high radiation area or a very high radiation area.

4.18.2 Each licensee or registrant shall monitor, to determine compliance with 4.9, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

4.18.2.1 Adults likely to receive, in 1 year, an intake in excess of 10 percent of the applicable ALI(s) in Table 4B1, Columns 1 and 2, of Appendix 4B;

4.18.2.2 Minors likely to receive, in 1 year, a committed effective dose equivalent in excess of 1 mSv (0.1 rem); and

4.18.2.3 Declared pregnant women likely to receive during the entire pregnancy, a committed effective dose equivalent in excess of 1 mSv (0.1 rem).

4.18.3 Registrants shall maintain records of the evaluation of likely external dose and the determination to monitor or not monitor individuals to demonstrate compliance with the occupational dose limits of Part 4. The registrant shall retain the record required by 4.18.3 for inspection until the Department terminates the registration requiring the record.

* * *

[NO FURTHER CHANGES TO THE RULE BEYOND THIS POINT]

PUBLICATION INSTRUCTIONS FOR
6 CCR 1007-1, Part 4,
Standards for protection against radiation

Adopted by the Board of Health on October 18, 2023

[Publication Instructions: STRIKE the text from the beginning of the rule through the title of the rule below the solid line, and INSERT the revised/updated/added text below to incorporate updates to the adoption and effective date.]

[* * * indicates unaffected sections of the rule]

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

RADIATION CONTROL - STANDARDS FOR PROTECTION AGAINST RADIATION

6 CCR 1007-1 Part 04

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

Adopted by the Board of Health on October 18, 2023; effective December 15, 2023.

PART 4: STANDARDS FOR PROTECTION AGAINST RADIATION

* * *

[Publication Instructions: STRIKE 4.1 through 4.4, and INSERT the revised text below to add the revised incorporation by reference section, consistent with other current rules.]

STANDARDS FOR PROTECTION AGAINST RADIATION

4.1 Purpose and Scope

4.1.1 Authority.

4.1.1.1 Rules and regulations set forth herein are adopted pursuant to the provisions of Sections 25-1-108, 25-1.5-101(1)(k) and (1)(l), and 25-11-104, CRS.

4.1.2 Basis and Purpose.

4.1.2.1 A statement of basis and purpose of these regulations is incorporated as part of these regulations; a copy may be obtained from the Department.

4.1.3 Scope.

4.1.3.1 This Part 4 establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses or registrations issued by the Department.

4.1.3.2 The requirements of Part 4 are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background

radiation, does not exceed the standards for protection against radiation prescribed in Part 4. However, nothing in Part 4 shall be construed as limiting actions that may be necessary to protect health and safety.

4.1.4 Applicability.

4.1.4.1 Except as specifically provided in other parts of these regulations, Part 4 applies to persons licensed or registered by the Department to receive, possess, use, transfer, or dispose of sources of radiation. The limits in Part 4 do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with 7.26, or to exposure from voluntary participation in medical research programs.

4.1.5 Published Material Incorporated by Reference.

4.1.5.1 Throughout this Part 4, federal regulations, state regulations, and standards or guidelines of outside organizations have been adopted and incorporated by reference. Unless a prior version of the incorporated material is otherwise specifically indicated, the materials incorporated by reference cited herein include only those versions that were in effect as of the most recent effective date of this Part 4 (December 2023), and not later amendments or editions of the incorporated material.

4.1.5.2 Materials incorporated by reference are available for public inspection, and copies (including certified copies) can be obtained at reasonable cost, during normal business hours from the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246. Additionally, https://www.colorado.gov/hm/radregs identifies where the incorporated material is available to the public on the internet at no cost. Due to copyright restrictions, certain materials incorporated in this Part are available for public inspection at the state publications depository and distribution center.

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4.2 Definitions.

4.2.1 Reserved.

4.3 Implementation.

4.3.1 Any existing license or registration condition that is more restrictive than Part 4 remains in force until there is an amendment or renewal of the license or registration.

4.4 Reserved.

* * *

[Publication Instructions: STRIKE 4.10 through 4.13, and INSERT the realigned and reformatted text below. There are no changes to text of the existing rule.]

4.10 Determination of Prior Occupational Dose.

4.10.1 For each individual who is likely to receive, in a year, an occupational dose requiring monitoring pursuant to 4.18, the licensee or registrant shall determine the occupational radiation dose received during the current year.

4.10.2 Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

4.10.2.1 The internal and external doses from all previous planned special exposures; and

4.10.2.2 All doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

4.10.3 In complying with the requirements of 4.10.1 or 4.10.2, a licensee or registrant may:

4.10.3.1 Accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and

4.10.3.2 Accept, as the record of cumulative radiation dose, an up-to-date Department Form R-16, Cumulative Occupational Exposure History, or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant; and

4.10.3.3 Obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

4.10.4 Record of Exposure History.

4.10.4.1 The licensee or registrant shall record the exposure history, as required by 4.10.1 or 4.10.2, on Department Form R-16, or other clear and legible record, of all the information required on that form. The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing Department Form R-16 or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on Department Form R-16 or equivalent indicating the periods of time for which data are not available.

4.10.4.2 Licensees or registrants are not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed pursuant to the Regulations in Part 4 in effect before January 1, 1994. Further, occupational exposure histories obtained and recorded before January 1, 1994 on Department Form R-16 or equivalent, would not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

4.10.5 If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

4.10.5.1 In establishing administrative controls pursuant to 4.6.6 for the current year, that the allowable dose limit for the individual is reduced by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

4.10.5.2 That the individual is not available for planned special exposures.

4.10.6 The licensee or registrant shall retain the records on Department Form R-16 or equivalent until the Department terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing Department Form R-16 or equivalent for 3 years after the record is made.

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A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in 4.6 provided that each of the following conditions in 4.11.1 through 4.11.7 is satisfied:

4.11.1 The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated to result from the planned special exposure are unavailable or impractical.

4.11.2 The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

4.11.3 Before a planned special exposure, the licensee or registrant ensures that each individual involved is:

4.11.3.1 Informed of the purpose of the planned operation; and

4.11.3.2 Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

4.11.3.3 Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

4.11.4 Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by 4.10.2 during the lifetime of the individual for each individual involved.

4.11.5 Subject to 4.6.2, the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

4.11.5.1 The numerical values of any of the dose limits in 4.6.1 in any year; and

4.11.5.2 Five times the annual dose limits in 4.6.1 during the individual's lifetime.

4.11.6 The licensee or registrant maintains records of the conduct of a planned special exposure in accordance with 4.45 and submits a written report in accordance with 4.54.

4.11.7 The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to 4.6.1 but shall be included in evaluations required by 4.11.4 and 4.11.5.

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The annual occupational dose limits for minors are 10 percent of the annual occupational dose limits specified for adult workers in 4.6.

4.13 Dose Equivalent to an Embryo/Fetus.

4.13.1 The licensee or registrant shall ensure that the dose equivalent to an embryo/fetus during the entire pregnancy, due to the occupational exposure of a declared pregnant woman, does not exceed 5 mSv (0.5 rem). See 4.46 for recordkeeping requirements.

4.13.2 The licensee or registrant shall make efforts to avoid substantial variation[2] above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in 4.13.1.

2 The National Council on Radiation Protection and Measurements recommended in NCRP Report No. 91 “Recommendations on Limits for Exposure to Ionizing Radiation” (June 1, 1987) that no more than 0.5 mSv (0.05 rem) to the embryo/fetus be received in any one month.

4.13.3 The dose equivalent to an embryo/fetus is the sum of:

4.13.3.1 The deep dose equivalent to the declared pregnant woman; and

4.13.3.2 The dose equivalent to the embryo/fetus resulting from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

4.13.4 If the dose equivalent to the embryo/fetus is found to have exceeded 5 mSv (0.5 rem), or is within 0.5 mSv (0.05 rem) of this dose, by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with 4.13.1 if the additional dose equivalent to the embryo/fetus does not exceed 0.5 mSv (0.05 rem) during the remainder of the pregnancy.

* * *

[Publication Instructions: STRIKE 4.18 through 4.18.3.2, and INSERT the revised text below, eliminating current 4.18.3.1 and 4.18.3.2. The adopted language incorporates the phrase “or the registrant” in 4.18.1. and revises 4.18.3 to incorporate a recordkeeping requirement for registrants.]

4.18 Conditions Requiring Individual Monitoring of External and Internal Occupational Dose.

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of Part 4. As a minimum:

4.18.1 Each licensee or registrant shall monitor occupational exposure to radiation from licensed and unlicensed radiation sources under the control of the licensee or the registrant and shall supply and require the use of individual monitoring devices by:

4.18.1.1 Adults likely to receive, in 1 year from sources external to the body, a dose in excess of 10 percent of the limits in 4.6.1;

4.18.1.2 Minors likely to receive, in 1 year from radiation sources external to the body, a deep dose equivalent in excess of 1 mSv (0.1 rem), a lens dose equivalent in excess of 1.5 mSv (0.15 rem), or a shallow dose equivalent to the skin or to the extremities in excess 5 mSv (0.5 rem);

4.18.1.3 Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 1 mSv (0.1 rem)[3]; and

3 All of the occupational doses in 4.6 continue to be applicable to the declared pregnant worker as long as the embryo/fetus dose limit is not exceeded.

4.18.1.4 Individuals entering a high radiation area or a very high radiation area.

4.18.2 Each licensee or registrant shall monitor, to determine compliance with 4.9, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

4.18.2.1 Adults likely to receive, in 1 year, an intake in excess of 10 percent of the applicable ALI(s) in Table 4B1, Columns 1 and 2, of Appendix 4B;

4.18.2.2 Minors likely to receive, in 1 year, a committed effective dose equivalent in excess of 1 mSv (0.1 rem); and

4.18.2.3 Declared pregnant women likely to receive during the entire pregnancy, a committed effective dose equivalent in excess of 1 mSv (0.1 rem).

4.18.3 Registrants shall maintain records of the evaluation of likely external dose and the determination to monitor or not monitor individuals to demonstrate compliance with the occupational dose limits of Part 4. The registrant shall retain the record required by 4.18.3 for inspection until the Department terminates the registration requiring the record.

* * *

[NO FURTHER CHANGES TO THE RULE BEYOND THIS POINT]

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Office of the Attorney General

Tracking number: 2023-00589

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

Hazardous Materials and Waste Management Division

on 10/18/2023

6 CCR 1007-1 Part 04

RADIATION CONTROL - STANDARDS FOR PROTECTION AGAINST RADIATION

The above-referenced rules were submitted to this office on 10/25/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 06, 2023 09:02:29

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Early Childhood

Agency

Child Care Program Licensing

CCR number

8 CCR 1402-1

Rule title

8 CCR 1402-1 CHILD CARE FACILITY LICENSING RULES AND REGULATIONS 1 - eff 12/15/2023

Effective date

12/15/2023

COLORADO DEPARTMENT OF EARLY CHILDHOOD

Division of Early Learning, Licensing, and Administration

CHILD CARE FACILITY LICENSING RULES AND REGULATIONS

8 CCR 1402-1

2.100 GENERAL RULES FOR CHILD CARE FACILITIES

2.101 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101, *et seq*. (the "APA"), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, section 26.5-1-101, *et seq*. (the "Early Childhood Act"), C.R.S., the Child Care Licensing Act, section 26.5-5-301, *et seq*., C.R.S.; and the Child Care Development and Block Grant Act of 2014, 42 U.S.C. sec. 9858e, and section 26.5-4-110(3), C.R.S.

2.102 SCOPE AND PURPOSE

These rules and regulations shall govern the processes and procedures to become a licensed child care facility, and the health and safety requirements of licensed child care facilities in Colorado. These rules will address the License Types, Application Process, Fees, Civil Penalties, Appeals And Waivers, Background Checks, Reporting requirements, Posting requirements, Confidentiality, Civil Rights, Fire, Health Inspection and Zoning Codes, and Emergency and Disaster Preparedness.

2.103 APPLICABILITY

The provisions of these rules and regulations shall be applicable to Family Child Care Homes 2.300, Child Care Facilities 2.200, School Age Child Care 2.500, Substitute Placement Agencies 2.800, Neighborhood Youth Organizations 2.700, and Children's Resident Camps 2.400, licensed and regulated by the Colorado Department of Early Childhood.

2.104 DEFINITIONS

A. "Affiliate of a licensee" means any person or entity that owns more than five (5) percent of the ownership interest in the business operated by the licensee or the applicant for a license; or, any person who is directly responsible for the care and welfare of children served; or, any executive, officer, member of the governing board, or employee of a licensee; or, a relative of a licensee, which relative provides care to children at the licensee's facility or is otherwise involved in the management or operations of the licensee's facility.

B. "Annually" means the time frame from the initial date of hire, training, licensing, or certification, and the following twelve months.

C. "Calendar year" means the time frame from January 1 to December 31.

D. "Child abuse," and "child neglect" mean the same as in the definition of "child abuse or neglect" set forth in section 19-1-103(1), C.R.S., unless otherwise indicated.

E. "Child Care Center" has the same meaning as set forth in section 26.5-5-303(3), C.R.S.

F. "Children's Resident Camp" has the same meaning as set forth in section 26.5-5-303(5), C.R.S.

G. "Consumer Product Safety Commission", as referred to in rules Regulating Child Care Facilities, means the National Commission that establishes standards for the safety of children's equipment and furnishings and for playground safety. All facilities licensed under the Child Care Licensing Act are subject to the Consumer Product Safety Act, 15 U.S.C. §§ 2051−2090, and its implementing regulations, 16 C.F.R. Parts 1101, 1102, 1105, 1107, 1109,1110, 1112, 1115, 1116, 1117, 1120, 1130, 1145,1199,1200, 1203, 1207, 1213 through 1263, 1272, 1307, 1308, 1309, 1310, 1501, 1510, 1511, 1512, and 1513 (2022), herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost at https://www.ecfr.gov/current/title-16/chapter-II. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Bldg. C, Denver, CO 80246, during regular business hours.

H. "Convicted" means a conviction by a jury or by a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere.

I. "Critical incident" is a serious incident or concern, or potential incident or concern, that poses a danger to a child or children at the facility or of a staff member at the facility.

J. "Department" means the Colorado Department of Early Childhood.

K. "Employee" or "applicant for employment," for the purpose of the child abuse or neglect records check required in rule section 2.120, is defined as: an individual (other than an individual who is related to all children for whom child care services are provided):

1. Who is employed by a licensed or qualified exempt child care provider for compensation, including contract employees or self-employed individuals;

2. Whose activities involve the care or supervision of children for a licensed or qualified exempt child care provider or unsupervised access to children who are cared for or supervised by a licensed or qualified exempt child care provider; or

3. Any individual residing in a licensed or qualified exempt family child care home who is age 18 or older.

L. "Facility" is any business or operation established for the purpose of providing child care services that are required to be licensed pursuant to the Child Care Licensing Act, section 26.5-5-301 *et seq.*, C.R.S.

M. "Family Child Care Home," has the same meaning as set forth in section 26.5-5-303(7), C.R.S.

N. "Final Agency Decision" means the same as a final agency action or order in compliance with the State Administrative Procedure Act, section 24-4-106(2), C.R.S., that determines the rights and obligations of the parties and represents the conclusion of the agency's decision-making process.

O. "Guest Child Care Facility" means the same as set forth in 26.5-5-303 (10) C.R.S.

P. "Governing Body" means the individual, partnership, corporation, or association in which the ultimate authority and legal responsibility is vested for the administration and operation of a child care facility.

Q. "Health Department" is the Colorado Department of Public Health and Environment (CDPHE) or the local county department of health.

R. "Licensee" means the entity or individual to which a license is issued and that has the legal capacity to enter into an agreement or contract, assume obligations, incur and pay debts, sue and be sued in its own right, and be held responsible for its actions. A licensee may be a governing body.

S. "Licensing Specialist" is the authorized representative of the Department who inspects and audits child care facilities to ensure compliance with licensing requirements and to investigate possible violations of those requirements.

T. "Negative licensing action" or "adverse action," has the same meaning as set forth in section 26.5-5-303(16), C.R.S.,

U. "Neighborhood Youth Organization," means the same as set forth in section 26.5-5-303(17), C.R.S.

V. "Relative" means the same as set forth in section 26.5-5-303(24), C.R.S.

W. "Trails" means the Colorado Department of Human Services (CDHS) confidential information system which maintains abuse and neglect referrals, investigations, and the investigation outcomes.

APPLICATION PROCESS, LICENSE TYPES, AND LICENSING PROVISIONS

2.105 ORIGINAL APPLICATION

A. A completed original application accompanied by the appropriate fee must be submitted to the Department a minimum of sixty (60) days prior to the proposed opening date for the facility.

B. A licensing evaluation will occur only after the Department has received the complete application and appropriate fee.

2.106 CHANGES REQUIRING A NEW APPLICATION

A. A license is deemed surrendered and a new application is required in any of the following circumstances:

1. Change of licensee, owner, or governing body;

2. Change in classification of facility or service offered; or

3. Change in location of the facility.

2.107 PERMANENT LICENSE

A. A permanent license is granted when the Department is satisfied that the facility or agency is in compliance with the appropriate Department rules and the Child Care Licensing Act. The permanent license remains in effect until surrendered or revoked.

B. Once a permanent license has been issued, the licensee must annually submit to the Department a declaration of compliance with the applicable licensing rules and notice of continuing operation on the form prescribed by the Department, along with the appropriate annual fee as set forth in rule section 2.111.

C. Failure to submit the annual Continuation Notice and fee will constitute a consistent failure to maintain Department standards and may result in fines or the revocation of the license.

2.108 PROVISIONAL LICENSE

A. A provisional license or certificate may be issued only for the initial six (6) month licensing period.

B. This license permits the facility to operate while it is temporarily unable to conform to all rules upon proof by the applicant that attempts are being made to comply with the rules.

C. If an applicant holds a valid provisional license at the time of application for a permanent license, the provisional license will remain in effect until the application is acted on by the Department.

2.109 PROBATIONARY LICENSE

A. The Department may make the license of any facility a probationary license as provided in section 26.5-5-317(2), C.R.S. Making a license probationary is a negative licensing action as defined in section 26.5-5-303(16)(a), C.R.S.

B. If the applicant holds a valid probationary license and submits the renewal application and appropriate fee for a permanent license, the current license will remain in effect until the renewal application is acted on by the Department.

2.110 MULTIPLE LICENSES

A. If a licensee wishes to assume child care responsibility in more than one classification of care, separate applications, fees, and licensing evaluations are required for each classification. A family child care home may only be licensed as one type of classification at any one location address.

B. If a licensee wishes to operate more than one facility of the same classification but at different locations, separate applications, fees, and licensing evaluations are required for each location.

C. Operating multiple licenses of the same classification at a single location by the same licensee or governing body is prohibited.

2.111 FEES

A. The appropriate application fee, must be submitted to the Department with the application for a child care, agency or neighborhood youth organization license at least sixty (60) calendar days prior to the anticipated opening date of the facility or the expiration date of the provisional or probationary license.

B. The appropriate annual continuation fee, must be submitted to the Department annually, at least sixty (60) calendar days prior to the anniversary date of the license, along with a completed continuation declaration.

C. Following is a schedule of original and annual continuation fees for all types of child care facilities and agencies:

FAMILY CHILD CARE HOMES (1-6 CHILDREN)	
	JULY 1, 2020, and beyond*
Original Application	$65.00
Continuation	$65.00
(*One year from licensed anniversary date)	

LARGE FAMILY CHILD CARE HOMES (7-12 CHILDREN)	
	JULY 1, 2020, and beyond*
Original Application	$100.00
Continuation	$100.00
(*One year from licensed anniversary date)	

EXPERIENCED FAMILY CHILD CARE PROVIDER (UP TO 9 CHILDREN)	
	JULY 1, 2020, and beyond*
Original Application	$100.00
Continuation	$100.00
(*One year from licensed anniversary date)	

SMALL CHILD CARE CENTERS, PRESCHOOLS, SCHOOL-AGE CHILD CARE, CHILDREN'S RESIDENT CAMPS AND NEIGHBORHOOD YOUTH ORGANIZATIONS (5-15 CHILDREN)	
	JULY 1, 2020, and beyond*
Original Application	$200.00
Continuation	$200.00
(*One year from licensed anniversary date)	

LARGE CHILD CARE CENTERS, PRESCHOOLS, SCHOOL-AGE CHILD CARE, CHILDREN'S RESIDENT CAMPS AND NEIGHBORHOOD YOUTH ORGANIZATIONS (16-30 CHILDREN)	
Facilities in this category will pay a base fee + a per child in capacity fee not to exceed $1,800	
	JULY 1, 2020, and beyond*
Original Application	Base $175.00+ $3.00 Per Child
Continuation	Base $175.00+ $3.00 Per Child
(*One year from licensed anniversary date)	

LARGE CHILD CARE CENTERS, PRESCHOOLS, SCHOOL-AGE CHILD CARE, CHILDREN'S RESIDENT CAMPS AND NEIGHBORHOOD YOUTH ORGANIZATIONS (31 OR MORE CHILDREN)	
Facilities in this category will pay a base fee + a per child in capacity fee not to exceed $1,800	
	JULY 1, 2020, and beyond*
Original Application	Base $300.00 + $3.00 Per Child
Continuation	Base $300.00 + $3.00 Per Child

(*One year from licensed anniversary date)	
Changes Made to All License Types	
	July 1, 2020, and beyond
Changes to Licensed Capacity	$97.00
Changes to Physical Premises	$97.00
Duplicate Licenses	

D. The appropriate fee must be submitted for each appeal request submitted within each calendar year. There will be no charge for waiver requests or emergency appeals.

LESS THAN 24-HOUR APPEAL AND FEES (PER CALENDAR YEAR)	
Initial appeal request	Free
Second appeal request	$10.00
Three or more requests	$25.00
Emergency Appeals	Free

E. Any eligible child care facility providing less than 24-hour care that holds a Colorado Shines level 3-5 and an average annual enrollment of at least fifty (50) percent of total children enrolled receiving assistance from the Colorado Child Care Assistance Program (CCCAP) or enroll on average at least fifty (50) percent of the county's total CCCAP population may receive a discounted continuation fee of up to fifty (50) percent of their respective license type. The Colorado Shines rating and CCCAP enrollment must be verified by the Department.

2.112 LICENSING EXEMPTIONS

A. A license must be obtained before care begins unless such care is exempt as set forth below.

B. A license is not required for:

1. A special school or class in religious instruction. Religious instruction is defined as instruction in religion as a subject of general education, or instruction in the principles of a particular religious faith. Faith or spiritually-based programs which offer religious instruction combined with early childhood education, child care or child development activities as a part of the daily routine must obtain a child care license.

2. A special school or class operated for a single skill-building purpose. Single skill building includes activities or instruction in one subject area. A single skill program includes the development of an individual skill which does not include naptime periods or overnight care, or any other time children are not engaged in that specific activity. Any time activities other than the identified single skill are provided, the program is no longer considered a single skill program and must obtain the appropriate license. Meals and snacks may be incorporated into the single skill request.

3. A child care center operated in connection with a church, shopping center, or business where children are cared for during short periods of time, not to exceed three hours in any twenty-four (24) hour period of time, while parents or persons in charge of such children, or employees of the church, shopping center, or business whose children are being cared for at such location are attending church services at such location, shopping, patronizing or working on the premises of the business. This facility must be operated on the premises of the church, business, or shopping center. Only children of parents or guardians who are attending a church activity; patronizing the business or shopping

center or working at the church, shopping center or business can be cared for in the center.

4. Occasional care of children with or without compensation, which means the offering of child care infrequently and irregularly that has no apparent pattern.

5. A family care home that provides less than 24-hour care. Care must only be provided using one (1) of the options below at any one time:

   a. Care of children who are directly related to the caregiver by blood, marriage or adoption. The relationship between the caregiver and child includes biological child(ren), step-child(ren), grandchild(ren), niece, nephew, sibling, or first cousin and provide care for children who are siblings from the same family household which is unrelated to the provider; or

   b. Care of up to four (4) children, related or unrelated to the caregiver. No more than two (2) children under the age of two years may be cared for at any one time.

6. A child care facility that is approved, certified, or licensed by any other department or agency, or by a federal government department or agency, which has standards for operation of the facility and inspects or monitors the facility.

7. The medical care of children in nursing homes.

8. Guest child care facility as defined in section 26.5-5-303(10), C.R.S.

9. Neighborhood Youth Organizations as defined in section 26.5-5-303(17), C.R.S.

10. Public services short-term child care facility as defined in section 26.5-5-303(22), C.R.S.

2.113 CIVIL PENALTIES AND INJUNCTIONS

A. Violation of any provision of the Child Care Licensing Act or intentional false statements or reports made to the Department or to any agency lawfully delegated by the Department to make an investigation or inspection may result in fines assessed of not more than $250 a day the first day, $500 for the second day, and $1,000 a day for the third and subsequent days, to a maximum of $10,000:

1. A civil penalty will be assessed by the Department only in conformity with the provisions and procedures specified in Article 4 of Title 24,, C.R.S. No civil penalty will be assessed without a hearing conducted pursuant to the Child Care Licensing Act and Article 4 of Title 24,, C.R.S., before an Administrative Law Judge acting on behalf of the Department.

2. Prior to receipt of a cease and desist order from the Department or from any agency delegated by the Department to make an investigation or inspection under the provision of the Child Care Licensing Act, any unlicensed child care facility may be fined up to $250 a day for the first day, $500 for the second day, and $1,000 a day for the third and subsequent days, to a maximum of $10,000 for each violation of the Child Care Licensing Act or for any statutory grounds as listed in section 26.5-5-317(2) C.R.S.

3. For providing child care for which a license is required after receipt of a cease and desist order, an unlicensed facility shall be fined up to $500, a sentence of up to 10 days in jail, or both.

4. Assessment of any civil penalty under this rule section will not preclude the Department from initiating injunctive proceedings pursuant to section 26.5-5-320, C.R.S.

5. A licensed child care facility may be fined up to $250 a day for the first day, $500 for the second day, and $1,000 a day for the third and subsequent days, to a maximum of $10,000 for each violation of the Child Care Licensing Act or for any statutory grounds as listed at section 26.5-5-317(2), C.R.S.

6. Assessment of any civil penalty does not preclude the Department from also taking action to deny, suspend, revoke, make probationary, or refuse to renew that license.

7. Any person intentionally making a false statement or report to the Department or to any agency delegated by the Department to make an investigation or inspection under the provisions of the Child Care Licensing Act may be fined up to $250 a day for the first day, $500 for the second day, $1,000 a day for the third and subsequent days to a maximum of $10,000.

8. Civil penalties assessed by the Department must be made payable to the Colorado Department of Early Childhood.

B. In addition to civil penalties that may be assessed under rule section 2.113(A), when an individual operates a facility after a license has been denied, suspended, revoked, or not renewed, or before an original license has been issued, injunctive proceedings may be initiated to enjoin the individual from operating a child care facility without a license.

C. Within ten (10) working days after receipt of a notice of final agency action with regard to a negative licensing action or the imposition of a fine, or when the Department identifies and documents in a report of inspection serious violations of any of the standards that could impact the health, safety or welfare of a child cared for at the facility, , each, facility, must provide the Department with the names and mailing addresses of the parents or legal guardians of each child cared for at the facility, so that the Department can notify the parents or legal guardians of the negative licensing action taken or the serious violation impacting the health, safety or welfare of a child. The facility will be responsible for paying a fine to the Department that is equal to the direct and indirect costs associated with the mailing of the notice.

APPEALS AND WAIVERS

2.114 OVERVIEW OF APPEALS AND WAIVERS

The Department is authorized to hear and decide three kinds of appeal or waiver requests by applicants or licensees: hardship appeals in this rule set, also referred to as hardship waivers, stringency appeals, and materials waiver requests, according to the procedures set forth in this rule section.

2.115 HARDSHIP WAIVERS

A. Any applicant or licensee who has applied for or been issued a license to operate a child care facility has a right to appeal, pursuant to section 26.5-5-314(5), C.R.S., any rule or standard which, in their opinion, poses an undue hardship on the person, facility, or community.

1. Undue hardship is a situation where compliance with the rule creates a substantial, unnecessary burden on the applicant or licensee’s business operation or the families or community it serves, which reasonable means cannot remedy. An undue hardship does not include the normal cost of operating the business.

2. Emergency hardship appeals are requests by applicants or licensees to excuse noncompliance with a specific child care licensing rule due to urgent, significant, and unexpected situations outside the applicant's or licensee's control. Specific situations that may be considered "emergencies" under this paragraph include, but are not limited to:

   a) Natural disasters;

   b) Infectious disease outbreaks;

   c) Mold outbreaks; or

   d) Acts of nature or an accident resulting in structural damage to the child care facility.

B. Such appeal must be submitted to the Department in writing within sixty (60) calendar days from the date on which the rule, standard, or emergency situation allegedly created the hardship. The applicant or licensee or their designated representative must send an appeal on the state-prescribed form to the appropriate division. Each rule appealed requires an individual appeal and applicable fee. If the appeal is an emergency hardship appeal, the applicant or licensee must mark it as such on the state-prescribed form.

C. When submitting an appeal, the applicant or licensee must consider the impact on the health, safety, and wellbeing of any children in care and include a proposed alternate compliance plan.

D. The Department must consider the impact of an appeal on the health, safety, and wellbeing of the children in care, which must take priority over any undue hardship alleged, when determining whether an appeal should be granted.

E. If the Department grants an appeal for undue hardship, it will issue the applicant or licensee an official decision notification letter temporarily excusing the applicant or licensee from compliance with the appealed rule or standard and accepting the alternate compliance plan.

2.116 STRINGENCY APPEALS

A. Any applicant or licensee who has applied for or been issued a license to operate a child care facility has a right to appeal, pursuant to section 26.5-5-314(5), C.R.S., any violation of a child care licensing rule cited in a report of inspection, on the basis that the rule has been too stringently applied by a representative of the Department. "Stringency," as used in this rule section 2.116, means the child care licensing representative applied rules too strictly, improperly, or unfairly. Disputes over the factual accuracy of a cited violation are not reviewable under this provision and must be resolved with the licensing representative's supervisor.

B. Such appeal must be submitted to the Department in writing within sixty (60) calendar days from the date of the report of inspection at issue. The applicant or licensee or their designated representative must send an appeal on the state-prescribed form to the appropriate division. Each rule citation requires an individual appeal and applicable fee.

C. When submitting an appeal, the applicant or licensee must provide all evidence that it believes shows the rule was applied too stringently.

D. The Department must consider the impact of an appeal on the health, safety, and wellbeing of the children in care.

E. If the Department finds a licensing rule was too stringently applied in the appealed citation, it will issue the applicant or licensee a new report of inspection with that citation removed, which shall for all purposes supersede the original report of inspection.

2.117 MATERIALS WAIVER REQUESTS

A. A child care center that is applied for or has been issued a license may request a waiver, pursuant to section 26.5-5-313, C.R.S., to use certain hazardous materials in its program or curriculum that would otherwise violate child care licensing rules.

B. The child care center must submit a materials waiver request in writing on the state-prescribed form to the appropriate division. Each rule for which waiver is requested requires an individual request and applicable fee. If the request also seeks to remove a citation on a report of inspection involving the materials, it must be submitted within sixty (60) calendar days from the date of the report of inspection; otherwise, it may be submitted at any time.

C. A child care center requesting a materials waiver must adopt a safety policy, included with the waiver request, that provides that:

1. Early childhood teachers are trained in the use of the specific material(s) in a way that provides reasonable, developmental and age-appropriate safety provisions for children;

2. Current training certificates are provided for each staff/classroom where the materials waiver is being sought. Training must be completed through nationally recognized programs related to the curriculum or philosophy, or through other Department-approved training, curriculum, or program validation; and,

3. Parents are notified in writing regarding the use of the hazardous materials in the child care center. The notice must include all of the potential safety risks associated with the materials. The child care center must obtain signed parental consent forms acknowledging awareness of the risks in using the materials in the child care center prior to implementing use of the identified materials and prior to any newly enrolled children attending the center after the waiver is implemented.

D. The Department must consider the impact of a materials waiver request on the health, safety, and wellbeing of the children in care.

E. If the Department grants a materials waiver request, it will issue the child care center an official decision notification letter allowing the use of the requested materials according to the provided safety policy. The applicant or licensee must post the decision letter next to the child care license until the letter's expiration date. If there is no expiration date, the decision letter expires three (3) years from the date of the letter. If programs want to continue the waiver after the expiration date of three (3) years they must submit a new waiver request. The approved waiver must be in place before using materials that pose a risk to children.

2.118 ADMINISTRATIVE REVIEW AND APPEAL PANEL PROCEDURES

A. The applicant or licensee must comply with all child care licensing rules and standards, including the rule(s) subject to an appeal or materials waiver request, until the applicant or licensee has received a written decision granting the appeal or waiver.

B. The Department will receive, review, and schedule all appeals and materials waiver requests for review by the appeals review panel constituted under section 26.5-5-314(5), C.R.S.

1. For hardship appeals, the Department may propose that the appeals review panel grant one or more appeals as part of a consent agenda, which the appeals review panel may approve with a single vote; except if any panel member objects to the consent agenda, the appeals on such agenda must be decided individually. The appeals review panel may not deny appeals by consent agenda.

2. For emergency hardship appeals, the Department may administratively grant the appeal if it meets the definition of an emergency situation and the proposed alternate compliance plan adequately protects the health, safety, and wellbeing of children in care. If the Department does not administratively grant the emergency hardship appeal, it must schedule the appeal for review by the appeals review panel.

3. For materials waiver requests, the Department will administratively grant or deny the waiver request within sixty (60) days after receipt of the request. If it denies a waiver, the Department must provide notice in its decision of the child care center's right to appeal the denial within forty-five (45) days and the center's right to meet with Department personnel as part of that appeal.

4. If a child care center appeals the denial of a materials waiver request within forty-five (45) days of the denial, the Department will schedule the appeal for review by the appeals review panel within forty-five (45) days of the appeal. The entire appeal process must not last longer than one hundred (100) days from the date of the notice of denial.

C. The appeals review panel will adopt a written decision recommending that the Department grant, deny, or grant with modifications an appeal or materials waiver request. The Department must send an official decision letter, including the written decision of the appeals review panel, to the applicant or licensee, within ten (10) days from the date of the appeals review panel meeting.

1. For hardship appeals and materials waiver requests, the official decision letter must be posted next to the child care license until its expiration date. If there is no expiration date, the letter expires three (3) years from its date.

2. If the Department approves a hardship appeal or materials waiver request and the applicant or licensee wishes to make changes to the alternate compliance plan or safety policy submitted with the original appeal or request, the applicant or licensee must submit a new hardship appeal or materials waiver request.

3. If, after the Department approves a hardship appeal or materials waiver request, the applicant or licensee violates the terms and conditions described in the approved alternate compliance plan, approved safety policy, or official decision letter, the Department's approval will immediately be rescinded and considered null and void. For purposes of this provision, any injuries, accidents, or founded complaints or investigations related to the appealed or waived licensing rule constitute a violation.

D. Hearing requests

1. For hardship or stringency appeals, if an applicant or licensee is aggrieved by the decision of the Department, the applicant or licensee may request an administrative hearing pursuant to section 24-4-105, C.R.S. Written requests for an administrative hearing must be received in writing within thirty (30) calendar days from the date the applicant or licensee received the Department's decision. In all such administrative hearings, the applicant or licensee will bear the burden of proof by a preponderance of the evidence.

2. For appeals from denials of materials waiver requests, the Department's decision is a final agency decision subject to judicial review pursuant to section 24-4-106, C.R.S.

CIVIL RIGHTS

2.119 CIVIL RIGHTS

All facilities licensed under the Child Care Licensing Act are subject to the following federal laws and regulations: the non-discrimination provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. section 2000d *et seq*. (2022), and its implementing regulation, 45 C.F.R. Part 80 (2022); Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e et seq. (2022), and its implementing regulation, 29 C.F.R. Part 1606 (2022); the Age Discrimination Act of 1975, 42 U.S.C. sections 6101-6017 (2022) and its implementing regulation, 45 C.F.R. Part 91 (2022); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794 (2022), and its implementing regulation, 45 C.F.R. Part 84 (2022), all of which are hereby incorporated by reference. No later editions or amendments are incorporated. These regulations are available for public inspection and copying at the Colorado Department of Early Childhood at 710 S. Ash St., Bldg. C, Denver, CO 80246, during regular business hours. These regulations are also available at no cost at http://www.ecfr.gov.

All facilities licensed under the Child Care Licensing Act are also subject to Titles I through V of the Americans with Disabilities Act, 42 U.S.C. section 12101 *et seq*. (2022), and its implementing regulation, 29 C.F.R. Part 1630 (2022), which is hereby incorporated by reference. No later editions or amendments are incorporated. These regulations are available for public inspection and copying at The Colorado Department of Early Childhood at 710 S. Ash St., Bldg. C, Denver, CO 80246, during regular business hours. These regulations are also available at no cost at http://www.ecfr.gov.

Decisions related to the enrollment or dismissal of a child with a disability or chronic condition must be in compliance with the Americans with Disabilities Act. The facility must provide reasonable accommodations for the child with a disability who has special needs.

A lack of independent ambulation or the need for assistance in feeding, toileting, or dressing or in other areas of self-care cannot be used as sole criteria for enrollment or placement or denial of enrollment. Efforts must be made to accommodate the child's needs and to integrate the child with their peers who do not have disabilities.

BACKGROUND CHECKS

2.120 CHILD ABUSE OR NEGLECT FOR BACKGROUND AND EMPLOYMENT INQUIRIES

A. An operator of a licensed facility, guest child care facility as defined in section 26.5-5-303(10), C.R.S., or an exempt family child care home provider must submit a request to determine if an operator, applicant for employment or current employee has been found responsible for a confirmed report of child abuse or neglect in the Department's automated system (Trails).

B. A child abuse or neglect records check is not necessary regarding out-of-state employees of a children's resident camp or school-age child care center for a camp or center that is in operation for fewer than ninety (90) calendar days; out-of-state employees operating under this exemption must be supervised at all times by a staff member who has successfully completed all background checks.

C. The Trails child abuse or neglect records request must be made on the state-prescribed form, accompanied by the required fee within the following required time frames:

1. Child care centers (less than 24-hour care), school-age child care facilities, family child care homes, and qualified exempt providers must meet the following:

a. For all individuals whose activities involve the care or supervision of children or who have unsupervised access to children, requests must be submitted and successfully completed prior to caring for children or allowing unsupervised access to children.

1) Individuals who have obtained a successfully completed CBI or FBI record check may care for children, for no longer than ninety (90) calendar days, while waiting for all other required background checks to be completed. The individual must be supervised at all times by an individual who has successfully completed all required background checks.

b. For each adult eighteen (18) years of age or older, residing in a licensed family child care home or a qualified exempt provider home, requests must be submitted at time of application.

c. For each adult eighteen (18) years of age or older, who begin residing in the home after care begins, requests must be submitted within five (5) calendar days of when he or she begins residing in the home, and these adults must not be allowed unsupervised access to children in care until all background checks have been successfully completed.

2. All other requests except those specified in rule section 2.120(C)(1) must be submitted within ten (10) calendar days of the first day of employment for each employee or facility.

D. The Trails child abuse and neglect records request must be made within ten (10) calendar days of the first day of employment for each employee or facility on the state-prescribed form, accompanied by the required fee.

E. The Trails child abuse and neglect records request must be accompanied by the individual's written authorization to obtain such information from the State automated system, if applicable.

F. The Department will inform the requesting party in writing of whether the individual has been confirmed to be a person responsible for an incident of child abuse or neglect.

1. If the result of the inquiry is that the individual has been confirmed as responsible for an incident of child abuse or neglect, the Department must provide the requesting party with information regarding the date of the reported incident, the type of abuse or neglect with the severity level, and the county department that confirmed the report.

2. If the result of the inquiry is that the individual has not been confirmed to be responsible for an incident of child abuse or neglect, the Department must notify the requesting party of this fact.

G. The information provided by the Department must serve only as the basis for further investigation. The director or operator may inform an applicant or employee that the report from the Department's automated system was a factor in the director or operator's decision with regard to the applicant or employee's employment.

H. Any person who willfully permits or who encourages the release of data or information related to child abuse or neglect contained in the Department's automated system to persons not permitted access to such information commits a Class 1 misdemeanor and may be punished as provided in section 18-1.3-501(1), C.R.S.

I. Every five (5) years, all child abuse and neglect inquiry background checks must be renewed by resubmitting an inquiry form and current fee to the Department for processing. An updated clearance letter or verification of the submission of the inquiry form must be obtained before five (5) years from the date reflected on the current clearance letter.

J. The results of the abuse and neglect inquiry must be maintained at the center, facility, or agency and must be available for review upon request by a Licensing Specialist.

2.121 CRIMINAL RECORD CHECK

A. Criminal records checks are required under the following circumstances:

1. In order to obtain any Colorado Bureau of Investigation (CBI) and/or Federal Bureau of Investigation (FBI) fingerprint criminal history records, each applicant listed below must have their fingerprints taken and processed at a vendor approved by CBI. Approved vendors may be located using the CBI website at Colorado.gov/cbi. Payment of the fee for the criminal record check is the responsibility of the individual being checked, identified as follows:

a. Each applicant for an original license for a center, facility, or agency and any adult eighteen (18) years of age or older who resides in the licensed center, facility or agency.

b. Each exempt family child care home provider who provides care for a child and each individual who provides care for a child who is related to the individual (referred collectively in this rule section as a “qualified provider”), if the child's care is funded in whole or in part with money received on the child's behalf from the publicly funded Colorado Child Care Assistance Program; and, any adult eighteen (18) years of age or older who resides with a qualified provider where the care is provided.

2. Each applicant for an original license for a Neighborhood Youth Organization must comply with the criminal background check requirements found at section 26.5-5-308, C.R.S.

a. The applicant must ascertain whether the person being investigated has been convicted of felony child abuse as defined in section 18-6-401, C.R.S., or a felony offense involving unlawful sexual behavior as defined in section 16-22-102(9), C.R.S. The Neighborhood Youth Organization must not hire a person as an employee or approve a person as a volunteer after confirmation of such a criminal history.

B. Only in the case of a children's resident camp or school-age child care center, out-of-state persons employed in a temporary capacity for less than ninety (90) days are not required to be fingerprinted to obtain a criminal record check. Each person exempted from fingerprinting and being checked with the Department's automated system must sign a statement which affirmatively states that she/he has not been convicted of any charge of child abuse or neglect, unlawful sexual offense, or any felony. Out-of-state employees operating under this exemption must be supervised at all times by a staff member who has successfully completed all background checks.

1. Prospective employers of such exempted persons must conduct reference checks of the prospective employees in order to verify previous work history and must conduct personal interviews with each such prospective employee.

C. At the time the annual declaration of compliance (see rule section 2.107(B) is submitted to the Department, except as required per this rule section 2.121(C), a criminal record check is required only for adults living at the licensed facility who have not previously obtained one. Because the Colorado Bureau of Investigation (CBI) provides the Department with ongoing notification of arrests, owners, applicants, licensees, and persons who live in the licensed facility who have previously obtained a criminal record check, they are not required to obtain additional criminal record checks.

1. Any resident of the family child care home or qualified exempt provider home turning eighteen (18) years of age shall complete the fingerprint process at an approved vendor fourteen (14) calendar days prior to their 18th birthday.

2. The fingerprint process shall be completed at an approved vendor within five (5) calendar days of when any new resident, eighteen (18) years of age or older, begins residing in a family child care home or qualified exempt provider home. Adults must not be allowed unsupervised access to children in care until all background checks have been successfully completed.

D. Each owner and employee sixteen (16) years of age or older of a facility or agency shall complete the fingerprint process at an approved vendor. Payment of the fee for the criminal record check is the responsibility of the individual being checked or the facility or agency. The results of the criminal record check, the CBI and/or Federal Bureau of Investigation (FBI) response letters, must be maintained at the home, center, facility, or agency and must be available for review upon request by a Licensing Specialist.

1. When an individual leaves employment, the facility must submit to the Department a completed Notification of Name Removal form to request the removal of the individual's name from their facility license number in the CBI database.

2. Except as required per rule section 2.121(D)(3), any adult volunteer, working as a staff member to meet the required staff-child ratio or staff qualifications, who works fourteen (14) days (112 hours) or more in a calendar year shall complete the fingerprint process at an approved vendor. The results of the criminal record check must be maintained at the facility or agency and must be available for inspection by a Licensing Specialist. An employee operating as a volunteer to meet required staff-child ratio that does not have a completed background check on file must be supervised at all times by a qualified staff member who has successfully completed all background checks.

3. Criminal background check requests for volunteers, whose activities involve the care and supervision of children; or who have unsupervised access to children, must be submitted and successfully completed prior to caring for children or allowing the individual unsupervised access to children in child care centers (less than 24-hour care), school-age child care facilities, family child care homes, and qualified exempt provider homes.

4. Requests for a criminal record check, other than those required per this rule section 2.121(D)(4) must be completed at an approved vendor within five (5) working days of the day that the individual begins to work at the facility or agency.

a. Criminal background check requests must be successfully completed prior to an individual caring for children or allowing the individual unsupervised access to children in child care centers (less than 24-hour care), school-age child care facilities, family child care homes, and qualified exempt provider homes.

b. A National Sex Offender Registry check request must be submitted and successfully completed prior to an individual caring for children or allowing the

individual unsupervised access to children in child care centers (less than 24-hour care), school-age child care facilities, family child care homes, and qualified exempt provider homes.

5. Every five (5) years, requests for FBI criminal record checks must be renewed by completing the fingerprint process at an approved vendor. An updated clearance letter or verification of the submission of the request must be obtained prior to five (5) years from the date reflected on the current clearance letter.

6. Facilities and agencies that hire individuals who have been convicted of any felony, except those listed in rule section 2.121(D)(7) below, unlawful sexual behavior, or any misdemeanor, the underlying factual basis of which has been found by the court on record to include an act of domestic violence must inform the Department of that hiring within fifteen (15) calendar days of receiving knowledge of the conviction.

7. A child care facility shall not employ or certify an individual who has been convicted of:

   a. Child abuse, as defined in section 18-6-401, C.R.S.

   b. A crime of violence, as defined in section 18-1.3-406(2), C.R.S.

   c. An offense involving unlawful sexual behavior, as defined in section 16-22-102(9), C.R.S.

   d. A felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.

   e. A felony involving physical assault, battery, or a drug-related offense within the five years preceding the date of application for a license or certificate.

   f. A pattern of felony or misdemeanor convictions within the ten (10) years immediately preceding submission of the application. “Pattern of felony or misdemeanor” shall include consideration of sections 26.5-5-317 and 26.5-5-309(4), C.R.S., regarding suspension, revocation and denial of a license, and shall be defined as:

      1) Three (3) or more convictions of third (3rd) degree assault as described in section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in section 18-6-800.3, C.R.S.;

      2) Five (5) misdemeanor convictions of any type, with at least two (2) convictions of third (3rd) degree assault as described in section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in section 18-6-800.3, C.R.S.; or

      3) Seven (7) misdemeanor convictions of any type.

   g. Any offense in any other state, the elements of which are substantially similar to the elements listed in this rule section 2.121(D)(7).

E. Payment of the fee for the FBI check is the responsibility of the individual who is obtaining the check or the facility or agency.

F. The Department may deny, revoke, suspend, change to probationary or fine a child care facility if the applicant(s), an affiliate of the applicant, or any person living with or employed by the applicant has been found to violate any of the provisions set forth in section 26.5-5-317(2), C.R.S.

G. The Department may deny an application for a child care facility license if the applicant is a relative affiliate of a licensee, as described in section 26.5-5-303(1.5)(d), C.R.S., of a child care facility, which is the subject of a previous negative licensing action or is the subject of a pending investigation by the Department that may result in a negative licensing action.

H. For all CBI fingerprint-based criminal history record information checks required in this rule section 2.121, including those confirming a criminal history as well as those confirming no criminal history, the Department will conduct a comparison search on the State Judicial Department's court case management system and the sex offender registry of the Colorado Department of Public Safety. The court case management search must be based on name, date of birth, and address, in addition to any other available criminal history data that the Department deems appropriate, is used to determine the type of crime(s) for which a person was arrested or convicted and the disposition thereof. The sex offender registry search is used to determine whether the address of a licensee or prospective licensee is listed as belonging to a registered sex offender.

I. Portability of Background Checks

1. Where two or more individually licensed facilities are wholly owned, operated, and controlled by a common ownership group or school district, a fingerprint-based criminal history records check and a check of the records and reports of child abuse or neglect maintained by the Colorado Department of Human Services, completed for one of the licensed facilities of the common ownership group or school district pursuant to this rule section for whom a criminal records check is required under section 26.5-5-316, C.R.S., may satisfy the records check requirement for any other licensed facility under the same common ownership group or school district. A new fingerprint-based criminal history records check or new check of the records and reports of child abuse or neglect maintained by the Colorado Department of Human Services is not required of such an individual if the common ownership group or school district maintains a central records management system for employees of all its licensed facilities; takes action as required pursuant to section 26.5-5-309, C.R.S., when informed of the results of a fingerprint-based criminal history record check or check of the records and reports of child abuse or neglect maintained by the Colorado Department of Human Services that requires action pursuant to the Child Care Licensing Act; and informs the Department whenever an additional licensed facility comes under or is no longer under its ownership or control.

2. When a licensee is inspected pursuant to the Child Care Licensing Act and records regarding Colorado Bureau of Investigation (CBI) and/or Federal Bureau of Investigation (FBI) fingerprint-based criminal background checks, as well as records and reports of child abuse and neglect maintained by the Department, and the comparison search on the State Judicial Department's court case management system are held at a central records management system, the licensee must be afforded fourteen (14) calendar days to provide to the Department documentation necessary to verify that employees at the licensed facility have the required records related to fingerprint-based criminal background checks.

J. State-based background checks

1. The following background check requests must be submitted and successfully completed for each state an individual has resided in, in the past five years, prior to an individual caring for children or allowing the individual unsupervised access to children in child care centers (less than 24-hour care), school-age child care facilities, family child care homes, and qualified exempt provider homes:

    a. State criminal history check

    b. State sex offender registry check

    c. State abuse and neglect registry check

ADMINISTRATION

2.122 FIRE INSPECTIONS, HEALTH INSPECTIONS, AND ZONING CODES

A. Prior to the original license being issued, following the renovation of the facility that would affect the licensing of the facility and at least every two (2) years thereafter, all child care facilities except family child care homes and Neighborhood Youth Organizations must be inspected and obtain an approving inspection report from the local department of health or the Colorado Department of Public Health and Environment (CDPHE) and from the local fire department. These reports must be maintained at the facility and be available for review upon request by a Licensing Specialist.

B. Prior to the original license being issued, all child care facilities, must submit to the Department written approval from the local zoning department approving operation of the facility. The approval must include the address of the child care facility and the ages and number of children to be served. The facility must also submit written zoning department approval to the Department any time there is a change to the license, including moving the facility to another location, increasing the capacity, or adding different ages of children.

C. All child care facilities must operate in compliance with local planning and zoning requirements of the municipality, city and county, or county where the facility is located.

2.123 GOVERNING BODY

A. The governing body must be identified by its legal name on the original application and annual continuation notice. The names and addresses of individuals who hold primary financial control and officers of the governing body must be fully disclosed to the Department.

B. The governing body must demonstrate to the Department, upon request, that there is sufficient financial support to operate and maintain the facility in accordance with all general licensing rules defined in rule section 2.104, the rules regulating the specific type of facility, and the goals and objectives of the facility.

2.124 REPORTS

A. Reporting for family child care homes, child care center, preschools, school-age child care, children's resident camps and Neighborhood Youth Organizations.

1. Within twenty-four (24) hours, excluding weekends and holidays, of the occurrence of a critical incident at the facility or within twenty-four (24) hours of a child's return to the facility the licensee must report in writing to the Colorado Department of Early Childhood, Division of Early Learning, Licensing, and Administration the following critical incidents involving a child in the care of the facility or a staff member on duty:

a. Any fatality including the death of a child, staff member or volunteer as a result of an accident, suicide, assault, Sudden Unexpected Infant Death or any natural cause while at the facility, or while on authorized or unauthorized leave from the facility. This report must be completed in the online injury system within twenty-four (24) hours of an incident. If a provider is unable to access the online system, you must use the paper form, and submit the form to the Department within twenty-four (24) hours of the incident.

b. An injury to a child that requires medical attention by a health care professional or admission to a hospital, whether or not treatment was given. This report must be completed in the online injury system within 24 hours of an incident. If a provider is unable to access the online system, you must use the paper form, and submit the form to the Department within twenty-four (24) hours of the incident.

c. A child or staff member with a reportable disease, as defined by the Colorado Department of Public Health and Environment at 6 CCR 1009-1, Appendix A (June 14, 2023), which is hereby incorporated by reference. No later editions or amendments are incorporated. These regulations are available for public inspection and copying at the Colorado Department of Early Childhood at 710 S. Ash St., Bldg. C, Denver, CO 80246, during regular business hours. These regulations are also available at no cost from the Colorado Department of Public Health and Environment at 4300 Cherry Creek Drive South, Denver, Colorado 80246 or at https://www.coloradosos.gov/CCR/Welcome.do. This report must be completed in the online injury system within twenty-four (24) hours of an incident. If a provider is unable to access the online system, you must use the paper form, and submit the form to the Department within twenty-four (24) hours of the incident.

d. Any allegation of physical, sexual, or emotional abuse or neglect to a child that results in a mandatory report to law enforcement or a county department of human or social services agency, or the child abuse reporting hotline as described in section 19-3-304, C.R.S.

e. Any fire that is responded to by a local fire department.

f. Any major threat to the security of a facility including, but not limited to, a threat to kidnap a child, riots, bomb threats, hostage situations, use of a weapon, drive by shootings, active shooter situations, lock downs, or lock out situations.

g. A drug or alcohol related incident involving a staff member or a child that requires outside medical or emergency response.

h. An assault which results in a report to law enforcement, as defined by sections 18-3-201 through 18-3-204, C.R.S., by a child upon a child; a child upon a staff member, volunteer or other adult; a staff member, volunteer, or other adult upon a child, other staff member or other adult.

i. A suicide attempt by a child at the facility which requires emergency intervention.

j. Felony theft or destruction of property by a child at the facility for which law enforcement is notified.

k. Any police or sheriff contact with the facility.

l. Any damage to the facility as a result of severe weather, fire, flood, mold or other natural disaster, or damage to the facility by any means that prevents the facility from normal operation.

2. Reports Made to the Department within Ten (10) Working Days.

a. Any legal action against a facility, agency, owner, operator, or governing body that relates to or may impact the care or placement of children.

b. Change of director of facility or agency; and

c. Closure of the facility or agency.

3. Changes to a License Requiring Written Notification to the Department and Prior Department Approval.

a. Proposed change in the number or age of children for whom the facility is licensed that differs from that authorized by the license.

b. Changes in the physical facility or use of rooms for child care at a facility.

c. Change of name of the facility or agency.

d. Change of residents in the facility, not to include those residents placed in the facility by a county department.

2.125 REPORTING OF LICENSING COMPLAINTS

A. Child care facilities must provide written information to parents or legal guardians at the time of admission and staff members at the time of employment on how to file a complaint concerning suspected licensing violations. For family child care homes, child care centers, preschools, school age child care, children's resident camps, and neighborhood youth organizations, the information must include the complete name, mailing address, and telephone number of the Colorado Department of Early Childhood.

2.126 REPORTING AND INVESTIGATING CHILD ABUSE

A. A child care facility must require each staff member of the facility to read and sign a statement clearly defining child abuse and neglect pursuant to state law and outlining the staff member's personal responsibility to report all incidents of child abuse or neglect according to state law.

B. Pursuant to section 19-3-304, C.R.S., any caregiver or staff member in a child care facility who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect shall immediately upon receiving such information report or cause a report to be made of such fact to the county department of human or social services, the local law enforcement agency, or through the child abuse hotline reporting system as set forth in section 26-5-111, C.R.S.

C. At the time of admission the facility must give the child's parent or guardian information that explains how to report suspected child abuse or child neglect.

D. Investigation of Child Abuse

1. Staff members of the county department of human or social services or a law enforcement agency that investigates an allegation of child abuse must be given the right to interview staff and children in care, and to obtain names, addresses, and telephone numbers of parents or legal guardians of children enrolled at the child care facility.

2. An agency or facility must not interfere or refuse to cooperate with a child protection investigation.

3. An agency or facility must not interview staff or children regarding the specific allegation(s) of child abuse or child neglect until the county department of human or social services and/or local law enforcement agency has had the opportunity to interview all appropriate individuals and completed their investigation.

4. Any report made to the law enforcement authorities or a county department of human or social services of an allegation of abuse of any child at the child care facility will result in the temporary suspension or reassignment of duties of the alleged perpetrator to remove the risk of harm to the child/children if there is reasonable cause to believe that the life or health of the victim or other children at the facility is in imminent danger due to continued contact between the alleged perpetrator and the child/children at the facility. Such suspension or reassignment of duties will remain in effect pending the outcome of the investigation by the appropriate authorities.

2.127 POSTING LICENSING INFORMATION

A. At all times during the operating hours of the facility, the facility/agency must post the current child care license in a prominent and conspicuous location easily observable by those entering the child care facility.

B. At all times during the operating hours of a family child care home, child care center, school-age child care center, or children's resident camp, the facility must post its most recent licensing inspection report or a notice as to where the report may be reviewed at the facility by the parent or legal guardian of a child or their designee.

C. At all times during the operating hours of a family child care home, child care center, preschool, school-age child care center, children's resident camp and Neighborhood Youth Organization, the facility must post in a prominent and conspicuous location information regarding the procedures for filing a complaint with the Colorado Department of Early Childhood, including the telephone number and mailing address.

D. All facilities, except family child care homes must post in every room of the child care facility, excluding bedrooms and living areas, the license capacity of the room and the staff-to-child ratio required by regulation to be maintained for the age of children cared for in the room.

RECORDS

2.128 CONFIDENTIALITY OF RECORDS

A The records concerning the licensing of facilities and agencies are open to the public except as provided below.

B. Anyone wishing to review a record must make a written request to the Department.

C. The following documents are confidential and not available for review:

1. Information identifying children or their families;

2. Scholastic records, health reports, social or psychological reports. These are available only to the person to whom the records pertain or his or her legal guardian;

3. Personal references requested by the State Department; and

4. Reports and records received from other agencies, including police and child protection investigation reports.

2.129 MAINTENANCE AND CONFIDENTIALITY OF CHILD RECORDS

A. Each licensed child care facility shall maintain records as required by the Department pertaining to the admission, progress, health, and discharge of children in care at the facility.

1. These records shall be made available to the state department upon request.

2. These records shall be maintained and stored in a confidential format.

3. All information regarding children and their families shall be kept confidential.

2.130 ACCESSIBILITY OF RECORDS

A. During hours of operation, a facility must allow access to parents and guardians having legal custody of a child in care to those areas of the facility that are licensed for child care.

B. During the hours of operation, the facility's most recent licensing, fire department, and health department inspection reports must be accessible to parents and legal guardians of children in care or their designee and to parents and legal guardians considering placing their children in care at the facility.

C. A facility does not violate this rule section when it restricts access by a parent, guardian or their designee to a child during an emergency as instructed by local authorities.

2.131 PERJURY

A. Application Forms for Employment with a Child Care Provider

1. Every application used in the State of Colorado for employment with a child care provider or facility, must include the following notice to the applicant: "Any applicant who knowingly or willfully makes a false statement of any material fact or thing in the application is guilty of perjury in the second degree as defined in section 18-8-503, C.R.S., and upon conviction thereof, shall be punished accordingly."

GENERAL HEALTH RULES

2.132 SMOKING AND TOBACCO PRODUCTS

Pursuant to sections 26.5-5-314(2)(e), 25-14-103.5, and 18-13-121, C.R.S., tobacco and nicotine products are prohibited by law from use in and around licensed child care facilities.

A. Smoking and tobacco product use is prohibited at all times while transporting children on field trips and excursions.

B. Smoking and tobacco product use is not prohibited in family child care homes during non-business hours.

EMERGENCY AND DISASTER PREPAREDNESS FOR CHILD CARE CENTERS, FAMILY CHILD CARE HOMES, SCHOOL-AGE PROGRAMS, AND CHILDREN'S RESIDENT CAMP

2.133 STAFF TRAINING

A. Prior to caring for children, all staff must complete a Department-approved training in emergency and disaster preparedness: Evacuation, Shelter in Place, Lockdown, and Active Shooter on Premises Plans for Children in Care. For seasonal children's resident camp programs, operating no more than 90 days per calendar year, at least one on site director must be trained in the Department approved training.

B. Each staff member of the facility must be trained in fire safety and the use of available fire extinguishers and fire alarms.

2.134 EVACUATION, SHELTER IN PLACE, LOCKDOWN, AND ACTIVE SHOOTER ON PREMISES PLANS FOR CHILDREN IN CARE

A. All child care providers must have a written plan for: evacuating and safely moving children to an alternate site; lockdown; shelter in place; and an active shooter on premises. The plan must include provisions for multiple types of hazards, such as floods, fires, tornadoes, and active shooter situations. The plan must be updated as changes occur and reviewed annually. All employees of a child care provider must also be annually trained on the provider's written plan prior to caring for children, and retrained as changes occur.

1 "Lockdown drill" means a drill in which the occupants of a building are restricted to the interior of the building and the building is secured.

2. "Shelter-in-place drill" means a drill in which the occupants of a building seek shelter in the building from an external threat.

3. "Active shooter on premises drill" means a drill to address an individual actively engaged in killing or attempting to kill people in a confined space or other populated area.

2.135 REUNITING FAMILIES AFTER AN EMERGENCY OR DISASTER.

A. All child care providers must have a written plan for emergency notification of parents and reunification of families following an emergency or disaster.

2.136 CHILDREN WITH DISABILITIES AND THOSE WITH ACCESS AND FUNCTIONAL NEEDS

A. All child care providers must have a written plan that accounts for children with disabilities as defined in 42 U.S.C. Section 12102 and those with access and functional needs as defined in the State Emergency Operations Plan (2019) (SEOP). The State Emergency Operations Plan (SEOP) is hereby incorporated by reference. No later editions or amendments are incorporated. The State Emergency Operations Plan (SEOP) is available for public inspection and copying at the Colorado Department of Early Childhood at 710 S. Ash St., Bldg. C, Denver, CO 80246 during regular business hours. The State Emergency Operations Plan (SEOP) is also available for no cost from the Colorado Division of Homeland Security & Emergency Management at https://www.colorado.gov/pacific/dhsem/state-eop. The plan must include a specific requirement indicating how all children with special needs will be included in the emergency plan.

2.137 CONTINUITY OF OPERATIONS AFTER A DISASTER.

A. All child care providers must have a written plan for continuity of operations in the aftermath of an emergency or disaster. Components of the plan must include:

1. Responsibility for essential staffing needs and predetermined roles during and after the emergency or disaster;

2. Procedure for backing up or retrieving staff and children's files; and

3. Procedure for protecting confidential and financial records.

B. During an emergency or other significant, unexpected event, a child care facility may request an emergency waiver to move to a temporary location or exceed capacity, on a temporary basis, to accept children and families from affected areas.

2.138 FIRE, NATURAL DISASTER, AND EMERGENCY DRILLS.

A. Emergency drills, lockdown and active shooter on premises drills must be held at least quarterly but often enough so that all occupants are familiar with the drill procedure and their conduct during a drill is a matter of established routine. Fire drills must be held monthly and be consistent with local fire department procedures. Tornado drills must be held monthly from March to October. A record of all emergency drills held over the past twelve (12) months must be maintained by the facility or center, including date and time of drill, number of adults and children participating, and the amount of time taken to evacuate.

B. Drills must be held at unexpected times and under varying conditions to simulate the conditions of an actual fire or other emergency event.

C. Drills must emphasize orderly evacuation under proper discipline rather than speed. No running should be permitted.

D Drills must include suitable procedures for ensuring that all persons in the building, or all persons subject to the drill, participate.

E. Fire alarm equipment must be used regularly in the conduct of fire exit drills. Hand bells or other alarm emanating devices may be used in lieu of fire alarm equipment if use of fire alarm equipment is not feasible including, but not limited to, facilities operating in buildings where multiple unrelated tenants share a common fire alarm system.

F. If appropriate to the location of the facility, forest fire, and/or flood drills must be held often enough that all occupants are familiar with the drill procedure and their conduct during a drill is a matter of established routine. A record of drills held over the past twelve (12) months must be maintained by the facility.

G. For children's resident camps and school-age day camps, at least one fire drill must be held within twenty-four (24) hours of the commencement of each camp session. The dates of the fire drills must be recorded in the camp office.

H. There must be a carbon monoxide detector installed in the area of the child care facility as recommended by the manufacturer and in the area where children sleep.

2.200 RULES REGULATING CHILD CARE CENTERS THAT PROVIDE LESS THAN 24-HOUR CARE

2.201 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 through 24-4-204 (the "APA"), C.R.S., the Anna Jo Garcia Haynes

Early Childhood Act, sections 26.5-1-101 through 26.5-1-103 (the "Early Childhood Act"), C.R.S., the Child Care Licensing Act, sections 26.5-5-301 through 26.5-5-329, C.R.S.; and the Child Care Development and Block Grant Act of 2014, and 42 U.S.C. sec. 9858e,.

The specific rulemaking authorities granted for child care centers include sections 26.5-5-303(3), 26.5-5-313, and 26.5-5-314(1) and (2), C.R.S.

2.202 SCOPE AND PURPOSE

The Colorado Department of Early Childhood, Division of Early Learning, Licensing, and Administration is responsible for the administration of health and safety rules and requirements for licensed child care facilities caring for five (5) or more children with or without compensation. These rules and regulations shall govern the processes and procedures to become a licensed child care center program in Colorado. All child care centers must comply with the "General Rules for Child Care Facilities" in rule section 2.100; "Rules Regulating Child Care Centers that Provide Less than 24-hour Care" in rule section 2.200; and "Rules Regulating Special Activities" in rule section 2.600.

Drop-in, part day, mobile preschool, teen parent, and child care programs and preschools operated by public school districts must be in compliance with all rules found in this rule section. Additional rules or substitutions to rules can be found under rule sections 2.239, 2.240, 2.241, 2.242, and 2.243.

2.203 APPLICABILITY

The provisions of these rules and regulations shall be applicable to licensed child care centers caring for five (5) or more children with or without compensation.

A. HARDSHIP WAIVERS

Any applicant or licensee who has applied for or been issued a license to operate a childcare facility has a right to appeal, pursuant to section 26.5-5-314(5), C.R.S., any rule or standard which, in their opinion, poses an undue hardship on the person, facility, or community. An "undue hardship" is defined as a situation where compliance with the rule creates a substantial, unnecessary burden on the applicant or licensee's business operation or the families or community it serves, which reasonable means cannot remedy. An undue hardship does not include the normal cost of operating the business.

2.204 DEFINITIONS

A. Child care centers that provide less than 24-hour care (referred to as "centers") provide comprehensive care for children when the parents or guardians are employed or otherwise unavailable to care for the children. Child care centers may operate twenty-four (24) hours a day, but the children are cared for at the center fewer than twenty-four (24) hours a day.

B. Child care centers that provide less than 24-hour programs of care include the following types of facilities:

1. A "large child care center" provides care for sixteen (16) or more children between the ages six (6) weeks and eighteen (18) years.

2. A "small child care center" provides care for up to fifteen (15) children between the ages of two (2) and eighteen (18) years.

3. An "infant program" provides care for children between the ages of six (6) weeks and eighteen (18) months.

4. A "toddler program" provides care for children between the ages of twelve (12) months (when walking independently or with a health care provider's statement indicating developmental appropriateness of placement in a toddler program) and thirty-six (36) months.

5. A "preschool" is a child care program for five (5) or more children between the ages of two and one-half (2 1/2) and seven (7) years.

6. A "mobile part-day preschool program" is a program with a mobile classroom that uses no permanent building on a regular basis, for children three (3) to seven (7) years of age, with no more than (8) eight children at any given time. Each class session must not exceed five (5) hours.

7. A "kindergarten program" provides a program for children the year before they enter the first grade. Only private kindergarten programs not regulated by the Colorado Department of Education are required to be licensed.

8. A "full day program" enrolls children for five (5) or more hours per day.

9. A "part-day program" enrolls children for a maximum of up to five (5) hours per day. Individual children shall not attend more than one (1), five (5) hour sessions per day.

10. A "drop-in child care center" provides occasional care for forty (40) or fewer children between the ages of twelve (12) months and thirteen (13) years of age for short periods of time not to exceed six (6) hours in any 24-hour period of time or fifteen (15) hours in any seven (7) day period of time.

11. A "teen parent program" provides care for children fourteen (14) days old to thirty-six (36) months and is operated by an accredited public school system on school premises. Infants between seven (7) and thirteen (13) days old may be accepted for care with written approval from a health care provider.

C. "Staff" and all references to staff or staff positions include paid staff, equally qualified volunteers, and substitutes under rule sections 2.212-2.217.

2.205 ADMINISTRATION

Child care centers shall adhere to the requirements of this rule section and the "Administration" sections in rule sections 2.122-2.127, of the "General Rules for Child Care Facilities."

A. The governing body must appoint a director who will be responsible to the governing body and who will be delegated the authority and responsibility for the operation of the center according to its defined purpose and policies.

B. The governing body must formulate the purpose and policies to be followed by the center. It must have a regular planned review of such purpose and policies to determine that the center is in compliance with licensing rules.

C. The governing body is responsible for providing necessary facilities, adequate financing, qualified personnel, services, and program functions for the safety and well-being of children in accordance with these rules.

D. Any center having a director assigned to a classroom must have qualified and adequate staff, allowing the director or qualified staff the ability to attend to the duties of a director as they arise.

E. The director of the center is responsible for administering the center in accordance with licensing rules. The director must plan and supervise the child development program, plan for or participate in selection of staff, plan for orientation and staff development, supervise and coordinate staff activities, evaluate staff performance, and participate in the program activities.

F. Licensed child care centers enrolling children five (5) years of age or younger are required to participate in Colorado Shines, the state quality rating and improvement system.

POLICIES AND PROCEDURES

2.206 STATEMENT OF POLICIES AND PROCEDURES

A. At the time of enrollment, and upon amendments to policies and procedures, the center must give the parent(s)/guardian(s) the center's policies and procedures and provide the opportunity to ask questions. Written copies must be available either electronically or in hard copy. The center must obtain a signed document stating that the parent(s)/guardian(s) have received the policies and procedures, and by signing the policies and procedures document, the parent(s)/guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and procedures.

B. The written policies and procedures must be developed, implemented, and followed, and must include at a minimum the following information:

1. The center's purpose and its philosophy on child care;

2. The ages of children accepted;

3. The hours the center is open, specific hours during which special programs are offered, and holidays when the center is closed;

4. The procedure regarding inclement and excessively hot weather;

5. The procedure concerning admission and registration of children including whether non-immunized or under immunized children are enrolled in the program;

6. An itemized fee schedule;

7. The procedure for identifying where children are at all times including times of transition;

8. The center's procedure on positive guidance, behavior expectations, positive instruction, supporting positive behaviors, as well as strategies and techniques for supporting children with challenging behaviors, including how the center will:

a. Promote responsive and positive child, staff, and family relationships and interactions;

b. Create and maintain a program-wide culture that promotes children's mental health, social, and emotional well-being;

c. Implement teaching strategies supporting positive behavior, pro-social peer interaction, and overall social and emotional competence in young children; and,

d. Provide individualized social and emotional intervention supports for children who need them, including methods for understanding child behavior; and developing,

adopting, and implementing a team-based positive behavior support plan with the intent to reduce challenging behavior and prevent suspensions and expulsions.

9. How decisions are made and what steps are taken prior to the suspension, expulsion, or request to parents or guardians to withdraw a child from care due to concerns about the child's behavioral issues. These procedures must be consistent with the center's policy on guidance and positive instruction, and include documentation of the steps taken to understand and respond to challenging behavior including:

    a. Identify and consult with an early childhood mental health consultant, as defined in section 26.5-3-701, C.R.S., or other specialist as needed.

10. The procedure, including notification of parent(s)/guardian(s), for handling children's illnesses, accidents, and injuries;

11. The procedures for emergencies and disaster preparedness such as but not limited to lost children, tornadoes, fires, shelter in place, lockdown, active shooter on premises, reunification with families after emergency or disaster, and evacuating children with disabilities as specified in rule section 2.136, of the "General Rules for Child Care Facilities";

12. The procedure for transporting children, if applicable, including transportation arrangements and parental permission for excursions and related activities;

13. The procedure for governing field trips, television and video viewing, and special activities, including staff responsibility for the supervision of children;

14. Media and internet usage policy outlining screen and media use related to their curriculum. The media plan must have information on ongoing communication with children about online safe practices for children over the age of five (5);

15. The procedure on children's safety related to riding in a vehicle, seating, supervision, and emergency procedures on the road;

16. The procedure for releasing children from the center only to persons for whom the center has written authorization and the procedure for picking-up the child during an emergency;

17. The procedures followed when a child is picked up from the center after the center is closed or not picked up at all, and to ensure that all children are picked up before the staff leave for the day;

18. The procedure for caring for children who arrive late to the center and their class/group is away from the center on a field trip or excursion;

19. The procedure for storing and administering children's medication and delegation of medication administration in compliance with sections 12-255-101 through 12-255-136, C.R.S., of the "Nurse and Nurse Aide Practice Act";

20. The procedure concerning children's personal belongings and money;

21. The provision of meals and snacks;

22. The procedure for diapering, toilet training, and toileting;

23. The procedure for allowing visitors to the center;

24. The procedure for conducting parent and staff conferences to partner with the parents(s)/guardian(s) to discuss the child's progress, social, emotional, and physical needs;

25. The procedure for filing a complaint about child care, including the name, address and telephone number of the Colorado Department of Early Childhood (see rule section 2.125 of the General Rules for Child Care Facilities);

26. The procedure for reporting of child abuse, including the name of the county department of social/ human services and phone number of where a child abuse report should be made (see rule section 2.126, of the General Rules for Child Care Facilities);

27. The procedure of the protection of infants from secondhand and thirdhand smoke;

28. The procedure for establishing safe sleep environments for infants including how staff will supervise and physically check on infants who are sleeping;

29. The procedure for dressing children appropriately for the weather; and

30. Notification when child care service is withdrawn and when parent(s)/guardian(s) withdraw their children from the center.

C. Policies and procedures must be reviewed annually. Any changes must be incorporated and must be communicated to the parent(s)/guardian(s).

2.207 COMMUNICATION, EMERGENCY, AND SECURITY PROCEDURES

A. For security purposes, a sign-in/sign-out sheet or other mechanism for parents/guardians, or staff if children are being transported, must be maintained daily by the center. It must include, for each child in care, the date, the child's name, the time when the child arrived at and left the center, and the parent /guardian or staff member's signature or other unique identifier. For children who are transported, parent(s)/guardian(s) must verify the accuracy of the sign-in/sign-out sheet at least weekly.

B. The center must have a working telephone with the number available to the public. Emergency telephone numbers of the following must be posted near the telephone: a 911 notice, where 911 is available, or rescue unit if 911 isn't available; a hospital or emergency medical clinic; the local fire, police, and health departments; and Rocky Mountain Poison Control. The telephone must be available to staff at all times that the center is in operation.

C. The center must be able to provide emergency transportation to a health care facility at all times.

D. The director of the center, or the director's delegated substitute, must have a means for determining at all times who is present at the center.

E. A written policy regarding visitors to the center must be posted and a record maintained daily by the center that includes at a minimum the date, time, visitor's name, and the purpose of the visit. At least one (1) piece of identification must be inspected for individuals who are unknown to personnel at the center.

F. The center must release the child only to an individual over the age of sixteen (16) for whom written authorization has been given by the parent(s)/guardian(s) and is maintained in the child's record (see rule section 2.208). In an emergency, the child may also be released to an individual for whom the child's parent/guardian has given verbal authorization. If the staff member who

releases the child does not know the individual, identification must be required to assure that the individual is authorized to pick up the child.

G. The center must have a procedure for dealing with individuals not authorized by the parent or guardian of a child who attempts to have the child released to them.

H. The center must have a written procedure for closing the center at the end of the day to ensure that all children are picked up.

RECORDS AND REPORTS

2.208 ADMINISTRATIVE RECORDS AND REPORTS

A. The following records must be on file at the center:

1. Records of enrollment, daily attendance for each child, and daily record of the time the child arrives at and departs from the center;

2. A list of current staff members, substitutes, and staffing patterns;

3. Copies of menus; and

4. A record of visitors to the center.

B. The center must submit to the Department as soon as possible, but not longer than twenty-four (24) hours, a written report about any child who has been separated from the group outside of the supervision of their assigned staff member or for whom the local authorities have been contacted. Such report must indicate:

1. The name, birth date, address, and telephone number of the child;

2. The names of the parent(s)/guardian(s) and their address and telephone number if different from those of the child;

3. The date when the child was lost;

4. The location, time, and circumstances when the child was separated from the group outside of their assigned staff member;

5. All actions taken to locate the child, including whether local authorities were notified; and

6. The name of the staff person supervising the child.

C. All programs must register their operational status information in the Department's provider status portal every calendar year between April and October.

1. All programs must update their information any time their operational status changes during a declared state emergency.

D. All prospective and current staff members in the following roles must register with the Colorado Shines Professional Development Information System:

1. Large Center Director;

2. Large Center Assistant Director;

3. Small Center Director;

4. Early Childhood Teacher;

5. Infant Program Supervisor;

6. Infant Early Childhood Teacher;

7. Toddler Early Childhood Teacher;

8. Kindergarten Teacher;

9. Assistant Early Childhood Teacher; and

10. Staff Aide.

2.209 CHILDREN'S RECORDS

A. An admission record must be completed for each child prior to or at the time of the child's admission. This record must be updated annually and when changes occur. The admission record must include:

1. The child's full name, birth date, current address, and date of enrollment;

2. Parent(s)/guardian(s) names; home and e-mail addresses; telephone numbers, including home, work, and cell numbers; employer name and work address; and, any special instructions as to how the parent(s)/guardian(s) may be reached during the hours that the child is in care at the center;

3. Names, addresses, and telephone numbers of persons authorized to pick up the child from the center;

4. Names, addresses, and telephone numbers of persons who can assume responsibility for the child in the event of an emergency if the parent(s)/guardian(s) cannot be reached immediately;

5. Name, address, and telephone numbers of the child's health care provider, dentist, and if applicable, their hospital of choice;

6. A health history, including any health care plans, which indicates communicable diseases and chronic illnesses or injuries the individual has had, any known drug reactions and allergies, medications being taken, any necessary health procedures or special diets, and immunization record;

7. A dated, written authorization for emergency medical care signed and updated annually by the parent(s)/guardian(s). The authorization must be notarized if required by the local hospital, clinic, or emergency health care facility;

8. Written authorization, obtained in advance of the event from a parent/guardian, for a child to participate in field trips or special activities, whether scheduled or unscheduled, whether walking or riding in an approved vehicle; and

9. Written authorization from a parent/guardian for media release.

B. The center must maintain and update annually and upon changes, a record on each child that includes:

1. A written record of any accident, illness, or injury requiring medical attention occurring during care must be retained in each child's record, with a copy provided to the parent(s)/guardian(s).

2. Observations of the child's development to document the child's progress and challenges to be discussed at parent conferences;

3. A record of parent conferences, including dates of conferences, and names of center staff and parent(s)/guardian(s) involved; and

4. A copy of the child's health statement completed by a health care provider.

2.210 STAFF RECORDS

A. A record must be maintained, either written or electronic, for each staff member that includes the following:

1. Name, address, telephone number, and birth date of the individual;

2. Verification of qualifications and training;

3. Immunization record or statement, and health history;

4. Dates of employment and employment history;

5. Names, addresses, and telephone numbers of persons to be notified in the event of an emergency; and,

6. All information from background checks as required in the "General Rules for Child Care Facilities" rule sections 2.120 and 2.121.

2.211 CONFIDENTIALITY AND RETENTION

A. The confidentiality of all staff and children's records must be maintained. See rule section 2.128, of the "General Rules for Child Care Facilities."

B. Staff and children's records must be available, upon request, to authorized personnel of the Department.

C. If records for organizations having more than one (1) center are kept in a central file, duplicate identifying and emergency information for both staff and children must also be kept on file at the center attended by the child and where the staff member is assigned.

D. The records of children and staff must be maintained by the center for at least three (3) years after the last date of attendance or employment with the program.

E. The health and mental health consultation records must be maintained by the center for at least three (3) years from the date of consultation.

F. Records of enrollment, daily attendance for each child and daily records of the time the child arrives at and departs from the center for the past twelve (12) months must be on file at the

center. The previous two (2) years must be on file at either the center or a central location or storage.

G. Posting of any personal information or photos of children on social media or advertisement without written parental consent is prohibited.

STAFF

2.212 GENERAL REQUIREMENTS FOR ALL STAFF

A. All staff at the center must demonstrate knowledgeable decision-making, judgment, and concern for the proper care and well-being of children.

B. Staff must not consume or be under the influence of any substance that impairs their ability to care for children.

C. Illegal drugs and drug paraphernalia, must never be present on the premises of the center.

D. Staff must not use marijuana and marijuana infused products, tobacco products of any kind, or alcohol in the presence of children. To prevent exposure to secondhand smoke, child care centers must prohibit the use of tobacco and marijuana products on all center property, both indoors and outdoors. All marijuana and marijuana infused products, vaping and tobacco products, and alcohol must be kept inaccessible to children at all times.

E. When caring for children, staff must refrain from the personal use of electronics including, but not limited to, cell phones and portable electronic devices.

F. Staff members must be current for all immunizations required by their employer .

G. All staff members must submit to the center a medical statement, signed and dated by a physician or other health care provider, verifying that they are in good mental, physical, and emotional health appropriate for the position for which they have been hired. This statement must be dated no more than six (6) months prior to employment or within thirty (30) calendar days after the first date of employment. Subsequent self-reported health histories must be submitted annually.

H. The duties and responsibilities of each staff position and the lines of authority and responsibility within the center must be in writing.

I. At the time of employment, staff members must be informed of their duties and assigned a supervisor.

J. Prior to working with children, each staff member must read and be instructed about all policies and procedures of the center. Staff members must sign a statement indicating that they have read and understand the center's policies and procedures.

K. Within thirty (30) calendar days of employment at the center, each staff member must read and be instructed about all licensing rules governing child care centers. Staff members must sign a statement indicating that they have read and understand the licensing rules.

L. If volunteers are used by the center, there must be a clearly established policy regarding their function, orientation, and supervision. Also see rule section 2.216.

M. Within thirty (30) calendar days of the last day of employment, staff members must be provided a letter verifying their experience at the center. The letter must contain the center’s address, phone

number, and license number; the employee's start date and end date; and the total number of hours worked with children. Hours worked with infants and toddlers must be documented separately from hours worked with other age groups. The letter must be signed by a director, owner, or human resources agent of the center or governing body.

N. Prior to working with children, each staff member must read and be trained on the center's policies and procedures for the administration of medications. Staff members must sign a statement indicating that they have read and have been trained on the center's administration of medications policies and procedures.

2.213 TRAINING

A. All staff must complete a pre-service building and physical premises safety training prior to working with children. The training must include identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, vehicular traffic handling and storage of hazardous materials and the appropriate disposal of biological contaminants.

1. This training is developed and facilitated by the program for staff to identify program specific environmental hazards. Staff must be retrained if there are changes to the building and physical premises.

B. All staff must complete a Department-approved standard precautions training prior to working with children. This training must be renewed annually and will be counted towards ongoing professional development.

C. Staff working with infants less than twelve (12) months old must complete a Department-approved safe sleep training prior to working with infants less than twelve (12) months old. This training must be renewed annually and will be counted towards ongoing professional development.

D. Staff working with children less than three (3) years of age must complete a Department-approved prevention of shaken baby/abusive head trauma training prior to working with children less than three (3) years of age. This training must be renewed every two (2) years and will be counted towards ongoing professional development.

E. For every thirty (30) or fewer children in attendance, there must be at least one (1) staff member on duty who holds a current Department-approved first aid and safety certificate, including cardiopulmonary resuscitation (CPR) for all ages of children, and is responsible for administering First Aid and CPR to children. Such individuals must be with the children at all times when the center is in operation. If children are at different locations, there must be a First Aid and CPR qualified staff member at each location.

F. Within thirty (30) calendar days of employment, all employees caring for children, not required by rule to be certified in First Aid and CPR, must complete the Department-approved Introduction to First Aid and CPR module. The module must be renewed every two (2) years.

G. Within thirty (30) calendar days of employment, all employees and regular volunteers must be trained using a Department-approved training about child abuse prevention, which includes common symptoms and signs of child abuse, how to report, where to report, and when to report suspected or known child abuse or neglect. This training must be renewed annually.

H. Within ninety (90) calendar days of employment, all staff required to register with the Colorado Shines Professional Development Information System (listed in rule section 2.208(D)) must complete the Department-approved training course: Introduction to the Early Intervention and

Preschool Special Education Programs. This course is required once and will be counted towards ongoing professional development.

I. Within ninety (90) calendar days of employment, all staff required to register with the Colorado Shines Professional Development Information System (listed in rule section 2.208(D)) must complete the Department-approved Recognizing the Impact of Bias on Early Childhood Professionals training or other Department-approved training on implicit bias. This course is required once and will be counted towards ongoing professional development.

J. Within ninety (90) calendar days of employment, all directors and assistant directors must complete the Department-approved training: Working with an Early Childhood Mental Health Consultant. This course is required once and will be counted towards ongoing professional development.

K. Within ninety (90) calendar days of employment, all directors and assistant directors must complete the Department-approved training: Introduction to Child Care Health Consultation. This course is required once and will be counted towards ongoing professional development.

L. All staff must have at least one (1) hour of child development training within ninety (90) days of employment. This training must include the major domains (cognitive, social, emotional, physical development and approaches to learning). This training is required once and will count toward ongoing training requirements if taken after the date of hire.

M. All staff who work with children must complete a minimum of fifteen (15) clock hours of ongoing professional development each year, beginning with the start date of the employee. At least three (3) clock hours per year must be in the focus of social-emotional development.

1. Ongoing professional development courses must demonstrate a direct connection to one (1) or more of the following competency areas:

    a. Child growth and development, and learning

    b. Child observation and assessment;

    c. Family and community partnerships;

    d. Social-emotional health and development promotion;

    e. Health, safety and nutrition;

    f. Professional practice; or

    g. Teaching practices.

2. Each one (1) semester credit hour course with a direct connection to the competency area listed in rule section 2.213(M), taken at an accredited college or university shall count as fifteen (15) clock hours of ongoing professional development.

3. Training hours completed can only be counted during the year taken and cannot be carried over.

4. To be counted for ongoing professional development, the training certificate must have documentation that includes:

    a. The title of the training;

b. The competency domain or from a nationally approved vendor list;

c. The date and clock hours of the training;

d. The name or signature of the trainer, or other approved method of verifying the identity of trainer or entity;

e. Expiration of training, if applicable; and

f. Connection to social emotional focus, if applicable.

5. The trainer must have documentation of the qualifications for each topic of training conducted, which must be available for review by the Department.

N. Within thirty (30) calendar days of employment and annually, all staff responsible for the collection, review, and maintenance of the child immunizations records must complete the Colorado Department of Public Health and Environment immunization course.

2.214 DIRECTOR QUALIFICATIONS - LARGE CHILD CARE CENTER

A. Large center directors must have a current director qualifications letter issued by the Department or a current early childhood professional credential level III or higher in version 3.0 as determined by the Department prior to working as the director of a large center.

B. The educational requirements for the director of a large center must be met by satisfactory completion of one (1) of the following. (All course hours are given in semester credit hours, but equivalent quarter credit hours are acceptable.) Official college transcripts must be submitted to the Department for evaluation of qualifications.

1. A Bachelor's, Master's, or Doctorate degree from an accredited college or university in one (1) of the following:

a. Child Development;

b. Child Psychology;

c. Early Childhood Education;

d. Early Childhood Special Education;

e. Educational Leadership and Administration;

f. Elementary Education;

g. Family and Human Development;

h. Family Studies;

i. Special Education; or

2. Completion of all of the following three (3) semester credit hour courses from an accredited college or university in each of the following subject or content areas:

a. Introduction to Early Childhood Professions;

b. Introduction to Early Childhood Techniques;

c. Guidance Strategies for Young Children or has been issued the Colorado Pyramid Model Training certificate of completion;

d. Health, Nutrition, and Safety;

e. Administration of Early Childhood Care and Education Programs;

f. Administration: Human Relations for Early Childhood Professions or Introduction to Business;

g. Curriculum Development: Methods and Techniques;

h. Child Growth and Development;

i. The Exceptional Child; and

j. Infant/Toddler Theory and Practice or have been issued the Expanding Quality Infant/Toddler Training certificate of completion; or

3. Completion of a course of training approved by the Department that includes course content listed at rule section 2.214(B)(1), and experience listed at rule section 2.214(C).

C. The experience requirements for the director of a large center must include direct work with young children within an early care and education setting and is based on the completion of the following amount of verified work experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual:

1. Persons with a Bachelor's, Master's, or Doctorate degree with a major emphasis as listed in rule section 2.214(B)(1), or individuals with an early childhood professional credential level III version 3.0 as determined by the Department; no additional experience is required.

2. Persons with an Associate's degree in early childhood education or child development must have three (3) months (455 hours) of verified experience.

3. Persons with a Bachelor's degree and have completed the thirty (30) semester credit hours specified in rule section 2.214(B)(2), must have three (3) months (455 hours) of verified experience.

4. Persons who have no degree but have completed the thirty (30) semester credit hours specified in rule section 2.214(B)(2), must have six (6) months (910 hours) of verified experience.

5. Additional requirements for verified experience include:

a. Verified experience acquired in a school-age child care center may count for up to half of the required experience for director qualifications. The other half of the required experience must be working directly with children in a child development program; and,

b. For family child care home experience to be considered, the applicant must be, or have been, the licensee in the state of Colorado.

D. Renewal of Large Center Director Qualifications Letter

1. All individuals who were previously qualified as a large center director by the Department, who have not completed the required courses in each of the following subject or content areas, must take one (1) course every two (2) years from an accredited college or university, with all courses completed by February 1, 2022, or be in compliance with a current transitory director qualification letter. Official transcripts listing completion of one (1) or more of the five (5) courses shall be submitted to the Department within thirty (30) calendar days of completing each course until all five (5) courses have been completed in:

    a. Guidance Strategies for Young Children or has been issued a Colorado Pyramid Model Training certificate of completion;

    b. Health, Nutrition and Safety or Child Nutrition;

    c. The Exceptional Child;

    d. Infant/Toddler Theory and Practice or have been issued the Expanding Quality in Infant and Toddler Care Training certificate of completion; and

    e. Administration: Human Relations for Early Childhood Professions or Introduction to Business.

2. Except for individuals holding an early childhood professional credential level III version 3.0 as determined by the Department, directors meeting all large center director requirements in rule section 2.214(B), in centers operating more than six (6) hours a day must complete a three (3) semester credit hour course from an accredited college or university every five (5) years in a subject related to the operation of a center and must be able to demonstrate the relationship of the course taken to the operation of the center.

3. The renewal application and the official transcripts must be submitted to the Department. The renewed director letter shall expire five (5) years from approval of the renewal application.

4. Director letters must be renewed prior to the expiration date or the letter becomes invalid and the individual no longer qualifies as a director of a large center.

E. Revocation of Large Center Director Letter

1. Persons may be denied an original or renewal of a director letter; a director letter may be revoked if substantial evidence has been found that the applicant or director is responsible for one or more of the following at any child care facility, including, but not limited to:

    a. Committing fraud;

    b. Responsible for egregious or repetitive grounds for negative licensing actions;

    c. Providing false information;

    d. Providing false transcripts for self or staff; or

    e. Providing false letters of experience for self or staff.

2. Persons who have had a director Letter revoked or denied for the reasons listed in rule section 2.214(E)(1), may submit a new application for consideration after a period of two (2) years from the date of denial or revocation.

3. A person issued a new director letter after a denial or revocation shall receive a provisional letter for no less than nine (9) months. After the provisional period has been completed, a new application may be submitted for consideration of a five (5) year time limited letter.

4. Persons whose director letter has been denied or revoked for the reasons listed in rule section 2.214(E)(1), may file an appeal in the same manner as a request for waiver, as specified in rule sections 2.114 through 2.118 of the "General Rules for Child Care Facilities."

F. Assistant Director Requirements

1. An assistant director working under the supervision of a director must be at least eighteen (18) years of age, have at least nine (9) months (1,365 hours) of experience as an early childhood teacher, and must meet one (1) of the following qualifications:

a. A Bachelor's, Master's, or Doctorate degree from an accredited college or university; or,

b. Completion of at least half of the required coursework for director qualifications in rule section 2.214(B)(2), including the following two (2) administration courses:

(1) Administration of Early Childhood Care and Education Programs; and

(2) Administration: Human Relations for Early Childhood Professions, or Introduction to Business.

G. All course grades used for the large center director or assistant director requirements must be a "C" or better.

2.215 DIRECTOR QUALIFICATIONS - SMALL CHILD CARE CENTER

A. The director or substitute director of a small center must either: meet large center director qualifications or meet at least one (1) of the following qualifications:

1. Possess a current teaching license issued by the Colorado Department of Education with an endorsement in the area of elementary education, early childhood education, early childhood special education, early childhood special education specialist; or principal licensure;

2. Possess a current early childhood professional credential level II or higher in version 3.0 as determined by the Department;

3. Current certification as a child development associate (CDA) credential in: center-based, preschool; center-based, infant-toddler; or family child care; or other Department-approved credential;

4. Two (2) years and nine (9) months (5,005 hours) of satisfactory experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual, and at least two (2) three (3)-semester credit hour courses from

an accredited college or university in early childhood education, and one (1) of the courses must be either:

a. Introduction to Early Childhood; or

b. Early Childhood Guidance Strategies for Children or has been issued Colorado Pyramid Model Training certificate of completion; or

5. Nine (9) months (1,365 hours) of satisfactory experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual, and an Associate's degree from an accredited college or university, with at least two (2) three (3)-semester credit hour courses in early childhood education, and one (1) of the courses must be either:

a. Introduction to Early Childhood Professions; or

b. Early Childhood Guidance Strategies for children or has been issued a Colorado Pyramid Model Training certificate of completion.

6. Three (3) months (455 hours) of satisfactory experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual; and an Associate's degree in child development or early childhood education from an accredited college or university, with at least two (2) three (3)-semester credit hour courses in either:

a. Introduction to Early Childhood Professions or possesses a Child Development Associate (CDA) credential in: Center-Based, Preschool; Center-Based, Infant-Toddler; or Family Child Care; or

b. Early Childhood Guidance Strategies for Children or has been issued a Colorado Pyramid Model Training certificate of completion.

B. Satisfactory experience includes all options listed at rule section 2.214(C).

C. All course grades used for the small child care center director requirements must be a "C" or better.

D. Substitute Director Requirements

1. In the absence of the director of a small center, an individual who meets director qualifications for a small center or a large center must substitute for the director.

2.216 QUALIFICATIONS FOR TEACHERS, SUBSTITUTES, STAFF AIDES, AND VOLUNTEERS

A. Early Childhood Teacher

1. An early childhood teacher, assigned responsibility for a single group of children and working under the supervision of a director, must be at least eighteen (18) years of age and meet at least one (1) of the following qualifications:

a. A Bachelor's, Master's, or Doctorate degree from an accredited college or university with a major area of study in one (1) of the following areas:

(1) Child Development;

(2) Child Psychology;

(3) Early Childhood Education;

(4) Early Childhood Special Education;

(5) Educational Leadership and Administration;

(6) Elementary Education;

(7) Family and Human Development;

(8) Family Studies; or

(9) Special Education;

b. A Bachelor's, Master's, or Doctorate degree from an accredited college or university with a major area of study in any area other than those listed at rule section 2.216(A)(1)(a), a, and an additional two (2) three (3)-semester credit hour courses in early child education, with one (1) course as the following:

(1) Introduction to Early Childhood Professions; or

(2) Early Childhood Guidance Strategies for Children or has been issued a Colorado Pyramid Model Training certificate of completion;

c. An Associate's degree (60 semester credit hours) from an accredited college or university in early childhood education or child development, which must include at least two (2), three (3)-semester credit hour courses in either:

(1) Introduction to Early Childhood Professions; or

(2) Early Childhood Guidance Strategies for Children or has been issued a Colorado Pyramid Model Training certificate of completion;

d. A current professional teaching license issued by the Colorado Department of Education with an endorsement in the area of elementary education, early childhood education, early childhood special education, or early childhood special education specialist;

e. A current early childhood professional credential level II or higher in version 3.0 as determined by the Department;

f. A current certification as a child development associate (CDA) in: center-based, preschool; center-based, infant-toddler; or family child care; or other Department-approved credential;

g. Completion of a course of training approved by the Department and published on the Department's approval list; and nine (9) months (1,365 hours) of verified experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual;

h. Three (3) months (455 hours) of verified experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual; and the completion of eighteen (18) semester credit hours from an

accredited college or university in early childhood education, with one (1) course as:

(1) Introduction to Early Childhood Professions; or

(2) Early Childhood Guidance Strategies for Children or has been issued a Colorado Pyramid Model Training certificate of completion;

i. Twenty-one (21) months (3,185 hours) of verified experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual. Satisfactory experience includes being a licensee of a Colorado family child care home, a teacher's aide or teacher in a child care center, preschool, or elementary school. In addition, the individual must either:

(1) Possess a current early childhood professional credential level I or higher in version 3.0 as determined by the Department; or

(2) Complete two (2) three (3) semester credit hour courses from an accredited college or university in early childhood education with one (1) course as either:

(a) Introduction to early childhood professions or has been issued the Child Development Associate (CDA) credential; or

(b) Early childhood guidance strategies for children or has been issued a Colorado Pyramid Model training certificate of completion.

2. All course grades used for the early childhood teacher requirements must be a "C" or better.

B. Infant Program Staff

1. Staff Requirements

a. The infant program must have an infant program supervisor who meets at least one (1) of the following qualifications:

(1) A Registered Nurse, with an active license from the Colorado State Board of Nursing, with a minimum of three (3) months (455 hours) of verifiable experience in the care and supervision of infants who are not related to the individual;

(2) A Licensed Practical Nurse, with an active license from the Colorado State Board of Nursing, a minimum of nine (9) months (1,365 hours) of verifiable experience in the care and supervision of infants who are not related to the individual;

(3) An adult who holds a certificate in infant and toddler care from an accredited college or university with completion of a minimum of thirty (30) semester credit hours in the development and care of infants and toddlers in a group setting;

(4) An adult who is currently certified as a child development associate (CDA) in: center-based, preschool; center-based, infant-toddler; or family

child care; and has completed the infant/toddler theory and practice or has been issued the expanding quality in infant and toddler care training certificate of completion;

(5) An adult who holds a current early childhood professional credential level II or higher in version 3.0, as determined by the Department, has a minimum of nine (9) months (1,365 hours) of verifiable experience in the care and supervision of infants and/or toddlers, and:

(a) Has completed one (1) three (3) semester credit hour course in infant/toddler development; or

(b) Has completed the Department-approved expanding quality in infant and toddler care training course.

(6) An adult who:

(a) Is at least nineteen (19) years of age;

(b) Is qualified as an early childhood teacher (rule section 2.216(A));

(c) Has a minimum of nine (9) months (1,365 hours) of verifiable experience in the group care of infants or toddlers; and

(d) Has completed at least two (2) three (3)-semester credit hour courses from an accredited college or university on the development and care of infants and toddlers in a group setting, one (1) of which must be:

(i) Infant/Toddler Development; or

(ii) The Department-approved expanding quality in infant and toddler care training course.

(7) An adult who:

(a) Is at least nineteen (19) years of age;

(b) Is qualified as an early childhood teacher (rule section 2.216(A));

(c) Has a minimum of one (1) year and nine (9) months (3,185 hours) of verifiable experience in the group care and supervision of infants or toddlers; and

(d) Will complete, within the first six (6) months of employment, two (2) three (3)-semester credit hour courses from an accredited college or university, one (1) of which must be:

(i) Infant/Toddler development; or

(ii) The Department-approved expanding quality in infant and toddler care training course.

b. An infant program early childhood teacher must meet the following requirements:

(1) Meet the qualifications for an early childhood teacher found at rule section 2.216(A), or be qualified as an infant program supervisor; and

(2) Has a minimum three (3) months (455 hours) of verifiable experience in the care and supervision of children under three (3) years of age.

c. Prior to being assigned a group of children, the infant program early childhood teacher must complete eight (8) hours of orientation in the infant program under the supervision of the infant program supervisor. The orientation may include, but not limited to, the following topics:

(1) Toys and equipment, appropriate activities for infants and toddlers, appropriate sleep positions for infants and toddlers, and the safe and appropriate diaper change technique.

d. The infant program staff aide must be at least eighteen (18) years of age, must have completed eight (8) hours of orientation as listed above at the infant program, and must work under the direct supervision of an infant early childhood teacher.

e. There must be at least one (1) staff member on duty in each infant room at all times who holds a current Department-approved first aid and safety certificate that includes cardiopulmonary resuscitation (CPR) for all ages of children.

2. Required Staff and Supervision

(See chart in rule section 2.217(A))

a. In the infant program, there must be a qualified infant program supervisor present sixty percent (60%) of the hours of operation of the infant program who is responsible for the care of the infants. An individual qualified as an infant early childhood teacher must be responsible during the remaining time.

b. The infant program supervisor or an infant early childhood teacher must be assigned to each group of ten (10) or fewer infants in attendance. An infant program staff aide may be assigned to assist the infant program supervisor or the infant early childhood teacher when six (6) through ten (10) infants are in care in the group to maintain the staff ratio of one (1) adult for each five (5) infants.

c. There must be assigned at least one (1) infant program supervisor in the infant program for each twenty (20) or fewer infants in attendance.

C. Toddler Program Staff

1. Staff Requirements

a. The toddler early childhood teacher, a staff member assigned responsibility for a single group and working under the supervision of the director, must meet at least one (1) of the following qualifications:

b. A Registered Nurse, licensed to practice in Colorado, with a minimum of three (3) months (455 hours) of verifiable experience in the care and supervision of children less than three (3) years of age who are not related to the individual;

c. A Licensed Practical Nurse, licensed to practice in Colorado, with at least nine (9) months (1,365 hours) of verifiable experience in the care and supervision of children less than three (3) years of age who are not related to the individual;

d. An adult who holds a certificate in infant and toddler care from an accredited college or university with completion of at least thirty (30) semester credit hours or equivalent in such courses as child growth and development, nutrition, and care practices with children birth to three (3) years of age;

e. An adult who is certified as a child development associate (CDA) in: center-based, preschool; center-based, infant-toddler; or family child care; or is certified as a child care professional (CCP); or holds another Department-approved certificate;

f. An adult who meets the education and experience requirements for an early childhood teacher of a large center (rule section 2.216(A)); or

g. A current early childhood professional credential level II or higher in version 3.0 as determined by the Department.

2. Staff aides must be at least sixteen (16) years of age, must work directly under the supervision of the director or a toddler early childhood teacher, and must have completed eight (8) hours of orientation at the toddler program.

3. For every fifteen (15) or fewer toddlers, there must be at least one (1) staff member in the toddler program at all times who has a current Department-approved first aid and safety certificate that includes (CPR) for all ages of children.

D. Kindergarten Teacher

A kindergarten teacher, assigned responsibility for a single group of children during times specified in rule section 2.217, must meet one (1) of the following qualifications:

1. Each teacher of a kindergarten class must have the same qualifications as a director for a large center (see rule section 2.214); or must possess a current professional teaching license issued by the Colorado Department of Education in elementary education; or

2. A current early childhood professional credential level III or higher in version 3.0 as determined by the Department.

E. Assistant Early Childhood Teacher

An assistant early childhood teacher, assigned responsibility for a single group of children during times specified in rule section 2.217, must meet one (1) of the following qualifications:

1. Completion of one (1) of the early childhood education courses in rule section 2.214(B)(2), with a course grade of “C” or better; and a minimum of nine (9) months (1,365 hours) of verified experience in the care and supervision of four (4) or more children less than eight (8) years of age who are not related to the individual. Assistant early childhood teachers must be enrolled in and attending the second (2nd) early childhood education course, which will be used as the basis for their qualification for the position of early childhood teacher; or

2. Completion of two (2) of the early childhood education courses referenced in rule section 2.216(A)(1)(b), with a course grade of “C” or better and no experience; or,

3. A current early childhood professional credential level I or higher in version 3.0 as determined by the Department.

F. Substitute Staff

1. Equally qualified staff must be available to substitute for regularly assigned staff who are sick, on vacation, or otherwise unable to be on duty.

2. For short term unscheduled early childhood teacher vacancies up to ten (10) business days per calendar year, an assistant early childhood teacher can substitute for the early childhood teacher. The date and times of substitution must be recorded and available for review at all times.

G. Staff Aide

1. Staff aides must be at least sixteen (16) years of age and must work directly under the supervision of the director or an early childhood teacher.

2. Infant staff aides must be at least eighteen (18) years of age.

3. Staff aides, without supervision from an early childhood teacher or director, may supervise no more than two (2) preschool age children while assisting the children with diapering or toileting.

H. Volunteers

1. Volunteers who are used to meet staff to child ratio must be equally qualified as an early childhood teacher, assistant early childhood teacher, or staff aide. Equally qualified volunteers must have complete staff records as required in rule section 2.210 and complete training requirements as required in rule section 2.213.

2. Volunteers who are not required to be equally qualified or successfully complete background checks must be supervised and given instruction as to the center's policies and procedures.

3. Volunteers between the ages of twelve (12) and sixteen (16) must have a written purpose developed by the center for volunteering and may not volunteer for more than two (2) hours per day.

2.217 REQUIRED STAFF AND SUPERVISION

A. Staff-Child Ratios

1. For the purposes of this rule subsection (A), in determining staff-child ratios, only staff members and/or volunteers qualified under rule section 2.216(A), who work directly with children are counted.

2. For full day programs, during times of low attendance and/or during the first and last hour of the day, when only eight (8) or fewer children are present in the facility, there must be at least one (1) early childhood teacher or assistant early childhood teacher working with the children and a second staff member must be on site and immediately available. There must be no more than two (2) children less than the age of two (2) present. When nine (9) or more children are in attendance, at least two (2) staff members must be on duty.

3. The director of the center must be present at the center at least sixty percent (60%) of any day that the center is open.

    a. Centers licensed under the same governing body that provide care for preschool-age children only at multiple locations are not required to have a large center director qualified staff member assigned to each program. to qualify, centers must have an organizational structure that includes employees of the center that provide at least ten (10) administrative support elements from the following:

        (1) Colorado Preschool Program Coordinator;

        (2) Parent Educational Specialist;

        (3) Principal or Executive Director;

        (4) Health Coordinator;

        (5) Nurse;

        (6) Health Technician;

        (7) Food Service Director;

        (8) A Registered Dietitian or an individual with a Master's level or higher education in Nutrition;

        (9) Fire/Health/Safety Inspector;

        (10) Mental Health Team;

        (11) Speech Language Pathologist;

        (12) Occupational/Physical Therapist;

        (13) School Psychologist;

        (14) Family Outreach Worker;

        (15) Human Resource Specialist; or

        (16) Transportation Manager.

    b. The program must obtain a director who meets large center director qualifications if substantial evidence has been found leading to an adverse licensing action for any of the following:

        (1) Lack of supervision;

        (2) Operating out of the approved staff member to child ratio; or

        (3) Operating without sufficient qualified staff.

4. If the director of a large center cannot be present sixty percent (60%) of any day, an assistant director must be on site acting in the capacity of the director.

5. When there is a director vacancy or absence, an assistant director may substitute for the director for a maximum of up to twelve (12) weeks per calendar year. The assistant director must be on site at least sixty percent (60%) of any day the center is open. For vacancies exceeding twelve (12) weeks, an individual meeting director qualification must be on site acting as director until a new director is appointed. The dates must be documented and kept on file for review.

6. An assistant director must consult with a qualified director on administering the center in accordance with early childhood principles and practices and licensing rules.

7. There must be assigned at least one (1) qualified early childhood teacher supervising each group of children unless otherwise specified in rules. A director may be the assigned teacher for one (1) group of children.

8. Full day programs may have assistant early childhood teachers supervise preschool-age and older children during the following periods of operation:

    a. Opening hours: an assistant early childhood teacher may be alone with children for the first two (2) hours of a center's daily operating hours;

    b. Nap time: an assistant early childhood teacher may be alone with children for up to one (1) hour during nap time;

    c. Closing hours: an assistant early childhood teacher may be alone with children for up to the two (2) hours prior to the closing time of a center's daily operations;

    d. Taking children to the restroom or diapering; and

    e. When substituting for an early childhood teacher in compliance with rule section 2.216(F)(2).

9. At least one (1) staff member with the current Department-approved medication administration training and delegation must be on duty at all times.

10. At nap time, the child to staff ratio may be doubled for children two and one half (2 ½) years of age and older in preschool classrooms when the following conditions have been met:

    a. At least half of the children are sleeping;

    b. Another staff member is onsite in the center and immediately available;

    c. Maximum group size and room capacity are not exceeded; and

    d. Staff member supervising children is qualified as an early childhood teacher or assistant early childhood teacher.

11. Formal kindergarten class sessions must have one (1) staff member for each twenty-five (25) or fewer children in attendance. At other parts of the day when children are in attendance, the ratio must be one (1) staff member to each fifteen (15) or fewer children.

12. Children of the director or of staff members who attend the center and other children on the premises for supervision and care must be counted against the licensed capacity in the appropriate age groups.

13. In determining staff-child ratios, children who are in attendance for only part of the day are counted only while at the center.

14. Staff-Child Ratios

AGES OF CHILDREN	NUMBER OF STAFF
6 weeks to 18 months (infants)	1 staff member to 5 infants
12 months to 36 months	1 staff member to 5 toddlers
24 months to 36 months	1 staff member to 7 toddlers
2-1/2 years to 3 years	1 staff member to 8 children
3 years to 4 years	1 staff member to 10 children
4 years to 5 years	1 staff member to 12 children
5 years and older	1 staff member to 15 children
Mixed age group 2-1/2 years to 6 years	1 staff member to 10 children

a. In other preschool age combinations, the staff ratio for the youngest child must be utilized if more than twenty percent (20%) of the group is composed of younger children. This does not apply to infants and toddlers. The ratio for toddler groups is based on the youngest child in the group.

15. Maximum Group Size for Children

AGES OF CHILDREN	MAXIMUM GROUP SIZE
6 weeks to 18 months	10 infants
12 months to 36 months	10 toddlers
24 months to 36 months	14 toddlers
2-1/2 years to 3 years	16 children
3 years to 4 years	20 children
4 years to 5 years	24 children
5 years and older	30 children
Mixed age group 2-1/2 to 6 years of age	20 children

a. In other preschool age combinations, the maximum group size for the youngest child must be utilized if more than twenty percent (20%) of the group is composed of younger children. This does not apply to infants and toddlers. The group size for toddler groups is based on the youngest child in the group.

b. Preschool age and school-age groups of children must be separated into developmentally appropriate activities. Groups are not required to be separated from each other by permanent or portable dividers or walls.

c. Group size for children in preschool and school-age classrooms may be exceeded for circle time, meal and snack time, special occasions, and activities.

d. The licensed room capacity must not be exceeded at any time.

e. Toddler-age groups of children must be separated from each other by permanent or portable dividers or other methods as approved by the Department.

f. When combining age groups, not including individual child transitions, children must be cared for in the room licensed for the youngest child in care, including the outdoor play area.

16. Emergency Situations

A. In the case of an emergency situation, including but not limited to illness, death, accident, law enforcement action, road closure, hazardous weather, emergency bodily function, child elopement, or providing emergency attention or care to a child, the child care center may operate under the following guidelines:

(1) The facility may temporarily use a staff member, who has successfully completed criminal background check requirements, to supervise children for no more than two (2) hours until a qualified staff member is secured. The dates and times must be recorded and made available for review at all times.

(2) A large child care center or a child care center that operates on the property of a school district, district charter school, or institute charter school, may permit a staff member, who has successfully completed criminal background check requirements but is not a qualified caregiver, to supervise children for an amount of time that is reasonably necessary to address an emergency circumstance.

(3) During any emergency situation, the facility must be in compliance with the staff-to-child ratio.

B. Service/Housekeeping Personnel

1. Service personnel must be available for housekeeping and food preparation as needed for adequate operation and maintenance of the center.

2. Assignment of housekeeping and maintenance duties to child care staff must not interfere with their supervisory responsibilities and child care duties.

C. Child Care Health Consultant

1. Center staff must have a monthly consultation with a current Department-approved child care health consultant who must meet one (1) of the following qualifications:

a. A licensed registered nurse with knowledge and experience in maternal and child health;

b. A pediatric nurse practitioner;

c. A family nurse practitioner; or

d. A physician with knowledge and experience in pediatrics or maternal and child health.

2. The monthly consultation must be specific to the needs of the facility and include some of the following topics: training, delegation and supervision of medication administration and special health procedures, health care plans, hygiene, disease prevention, equipment safety, nutrition, interaction between children and adult caregivers, and child growth and development.

3. The monthly consultation must be conducted on-site at least quarterly or more frequently as required by the child care health consultant. Teleconsultations are allowed for the remaining months.

4. The date and content of each consultation must be recorded and maintained in the center's files for three (3) years.

5. For the Department-approved child care health consultant, the center must maintain documentation from the Colorado Medical Board or Colorado State Board of Nursing that the physician's or registered nurse's licensure is active and in good standing.

6. For the Department-approved child care health consultant, the center must maintain documentation of a brief biography highlighting applicable knowledge, experience, and approximate dates worked as a school nurse or child care health consultant.

7. All Department-approved child care health consultants must complete the Department-approved child care health consultant introductory training course within six (6) months of hire. Child care health consultants must complete Department-approved ongoing professional development training every three (3) years. The center must obtain and maintain proof of training completion.

8. All Department-approved child care health consultants must complete the Department-approved Colorado Department of Public Health and Environment immunization course annually. The center must obtain and maintain proof of course completion.

9. All Department-approved child care health consultants must complete the Department-approved training about child abuse prevention, which includes common symptoms and signs of child abuse or neglect. This training must be completed within thirty (30) days of hire and renewed every three (3) years.

ADMISSION PROCEDURE

2.218 ADMISSION

A. The center must accept and care only for children of the ages for which it has been licensed. At no time shall the number of children in attendance exceed the number for which the center has been licensed.

B. Admission procedures must be completed prior to the child's attendance at the center and must include:

1. A pre-admission interview with the child's parent(s)/guardian(s) to determine whether the services offered by the center will meet the needs of the child and the parent(s)/ guardian(s);

2. Completion of the registration information required for inclusion in the child's record as required in rule section 2.209; and

3. If applicable, a Department-approved health care plan authorized by the child's health care provider and parent(s)/guardian(s) defining the interventions needed to care for a child who has an identified health or developmental condition or concern including, but not limited to seizures, asthma, diabetes, severe allergies, heart or respiratory conditions, and physical disabilities. Any applicable medications, supplies, and/or medical equipment must be available to the staff prior to the child's first day of care. The staff working with a child with a health care plan must be informed, trained, and delegated responsibility for carrying out the health care plan by the Department-approved child care health consultant; supervision of the plan and interventions must be documented.

C. Children with Special Needs

1. The admission of children who have special health care needs, disabilities, or developmental delays which includes children with social emotional and behavioral needs must be in alignment with the training and ability of staff and in compliance with the Americans with Disabilities Act. Services offered must show that a reasonable effort is made to accommodate the child's needs and to integrate the child with other children. (See rule section 2.119 of the General Rules Regulating Child Care Facilities)

2. The center must inform its Department-approved child care health consultant prior to the first day of care of the enrollment of a child with special health care needs, if known, so staff receive training, delegation and supervision by the Department-approved child care health consultant as indicated by the child's individualized health care plan.

3. For a child with special health care needs requiring intervention and/or medication, the center must obtain written instructions for providing services from the child's parent(s)/guardian(s), and the health care provider. If an existing individualized health care plan is provided for the child, it must be reviewed and followed by the center staff when caring for the child. If the child does not have an existing individualized health care plan, the individualized health care plan must be obtained by the child's first day of care.

4. For an enrolled child with a newly identified special health care need, the center must obtain written instructions for providing services from the child's parent(s)/guardian(s) and the health care provider. If the child with special health care needs does not have an existing individualized health care plan, the individualized health care plan and all associated medication(s) and/or equipment must be provided within thirty (30) calendar days of the child's identified need.

5. The individual health care plan must be updated at least every twelve (12) months from the date of the initial plan and as changes occur. The plan must include all information needed to care for the child, must be signed by the health care provider, parent(s)/guardian(s) and must include, but not be limited to, the following:

    a. Medication and dosing schedule;

    b. Nutrition and feeding instructions;

    c. Medical equipment or adaptive devices, including instructions;

    d. Medical emergency instructions;

    e. Toileting and personal hygiene instructions;

    f. Behavioral interventions; and

    g. Medical procedure/intervention orders.

D. If the parent(s)/guardian(s) agree(s) that the center should care for a child in the infant program who is eighteen (18) months or older, the center must have on file a written statement from a health care provider confirming that care for the child is appropriate in the infant program.

E. If the parent(s)/guardian(s) agree(s) that the center should care for a child in the toddler program who is twelve (12) months old but not walking independently, or is over thirty-six (36) months old, the center must have on file a written statement from a health care provider confirming that care for the child is appropriate in the toddler program.

HEALTH CARE

2.219 STATEMENTS OF HEALTH STATUS

A. The center has the right to refuse to admit a child if a statement from a health care provider or documentation of immunization status, or exemption, is not submitted.

B. At the time of admission, the parent(s)/guardian(s) must provide for each child entering the center:

1. Documentation of school-required immunization status or certificate of medical or nonmedical exemption, is required by the Colorado Board of Health. Up-to-date school-required immunizations must be documented as specified on the Colorado Department of Public Health and Environment certificate of immunization or on an "approved alternate" Certificate of Immunization, defined in Colorado Department of Public Health and Environment rules located in 6 CCR 1009-2 rule section VI(A), (May 15, 2023), no later editions or amendments are incorporated. These regulations are available from the Colorado Department of Public Health and Environment at no cost at https://www.coloradosos.gov/CCR/Welcome.do. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Bldg. C, Denver, CO 80246, during regular business hours. Colorado law requires proof of immunization status or exemption be provided prior to or on the first day of admission.

   a. If the parent or legal guardian of a child wants a nonmedical exemption from the immunization requirement based on a religious belief whose teachings are opposed to immunizations or a personal belief that is opposed to immunizations, the child's parent, or legal guardian must:

      (1) Submit the certificate of nonmedical exemption with a signature from an immunizing provider in Colorado; or

      (2) Submit the Colorado Department of Public Health and Environment Certificate of Nonmedical Exemption (May 2023) received upon the completion of Colorado Department of Public Health and Environment Online Immunization Education Module (Aug. 2021). The Certificate of Nonmedical Exemption and Education Module are herein incorporated by reference, no later editions or amendments are incorporated. The Certificate and Education Module are available at no cost from the Colorado Department of Public Health and Environment at https://cdphe.colorado.gov/vaccine-exemptions. The Certificate is available for public copying and inspection at the Colorado Department of Early Childhood, 720 S. Ash St., Bldg. C, Denver, CO 80246, during normal business hours..

2. Within thirty (30) calendar days of admission, and within thirty (30) calendar days following the expiration date of a previous health statement, the parent(s)/guardian(s) of each child must submit a statement of the child's current health status or written verification of a scheduled appointment with a health care provider. The statement of the child's current health status must be signed and dated by a health care provider who has seen the child within the last twelve (12) months, or within the last six (6) months for children less than two and one-half (2½) years of age. The statement must include when the next visit is required by the health care provider. All health statements must be kept at the center.

3. Statements of health status of children less than two (2) years of age must be updated as required in writing by the health care provider, or in accordance with the American Academy of Pediatrics Recommendations for Preventive Pediatric Health Care

schedule at https://downloads.aap.org/AAP/PDF/periodicity_schedule.pdf, (4th ed. American Academy of Pediatrics; (2017) herein incorporated by reference. No later editions or amendments are incorporated. These recommendations are available at no cost from https://www.aap.org/. These recommendations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Bldg. C, Denver, CO 80246, during regular business hours. .

4. Health statements for children over two (2) years of age to seven (7) years of age must be updated in accordance with the American Academy of Pediatrics Recommendations for Preventive Pediatric Health Care schedule for routine well child exams.

5. For children seven (7) years of age and older or who have completed the first (1st) grade, subsequent statements of health status must be obtained every three (3) years.

2.220 MEDICATION

A. Any unexpired routine medication, prescription or non-prescription (over the counter), must be administered only with a current written order of a health care provider with prescriptive authority and with written parental consent. Home remedies, homeopathic medication, vitamins, and supplements must not be administered to children in child care.

B. The written order by the person with prescriptive authority shall include:

1. Child's name;

2. Licensed prescribing practitioner name, telephone number, and signature;

3. Date authorized;

4. Name of medication and dosage;

5. Time of day medication is to be given;

6. Route of medication;

7. Length of time the medication is to be given;

8. Reason for medication (unless this information needs to remain confidential);

9. Side effects or reactions to watch for; and

10. Special instructions.

C. Medications must be kept in the original labeled bottle or container. Prescription medications must contain the original pharmacy label.

D. Over-the-counter medication must be kept in the originally labeled container and be labeled with the child's first and last name.

E. In the case medication needs to be given on an ongoing, long-term basis, the authorization and consent forms must be reauthorized on an at least annual basis. Any changes in the original medication authorization require a new written order by the prescribing practitioner and a change in the prescription label.

F. Staff designated by the director to give medications must complete the Department-approved medication administration training and have current annual delegation or more often as determined by the Department-approved child care health consultant. Delegation must be from the center's current Department-approved child care health consultant who must observe and document the competency of each staff member involved in medication administration. All staff administering medication must have current cardiopulmonary resuscitation (CPR) and first aid training prior to administering medication with the following exceptions:

1. Staff determined by the director, in consultation with the Department-approved child care health consultant, to be responsible for providing emergency medications must complete the Department-approved medication administration training: severe allergy or asthma. After completing the training, staff must receive delegation from their Department-approved child care health consultant for those medications only. Staff must then provide those medications to children based on the instructions from the child's individualized health care plan.

2. Staff determined by the director, in consultation with the Department-approved child care health consultant, to be responsible for providing medications not covered in the approved medication administration training shall also be permitted to administer medications and/or medical treatments such as emergency seizure medication, insulin, or oxygen with individualized training and delegation from the Department-approved child care health consultant based on instructions from the child's individualized health care plan.

3. Staff may be trained and delegated in the administration of a single rescue medication or rescue medical intervention by the center's Department-approved child care health consultant. Such training and delegation shall qualify the staff member to provide a rescue medication or treatment for a specific child based on instructions from the child's individualized health care plan.

G. All medications, except those medications specified in the Department-approved medication administration training as emergency medications, must be locked and inaccessible to children, but available to staff trained in administering medication. Controlled medications must be counted and safely secured, and specific policies regarding their handling require special attention in the center's policies. Access to these medications must be limited.

1. Emergency medications are not required to be locked but must be stored in an area inaccessible to children, and easily accessible and identifiable to staff. Emergency medications must be stored in accordance with the Department-approved child care health consultant's recommendation.

2. When away from the classroom, staff assigned to supervise the child must carry the emergency medication.

H. The center must have a written policy on the storage and access of inhalers and epinephrine carried by school-age children. The policy must include a written contract with the parent(s)/guardian(s) and child acknowledgement assigning levels of responsibility of each individual. This contract includes orders for the medication from a health care provider, along with confirmation from the health care provider and the Department-approved child care health consultant that the student has been instructed and is capable of self-administration of the prescribed medications.

I. Children are not allowed to bring medications to child care unless accompanied by a responsible adult.

J. If a medication is out of date or left over, the parent(s)/guardian(s) is responsible for picking up the medication. If the parent(s)/guardian(s) do not respond, the center must dispose of the medications as required by the Colorado Department of Public Health and Environment.

K. Topical preparations such as petroleum jelly, diaper rash ointments, sunscreen, insect repellent, and other ointments may be administered to children with written authorization from the parent(s)/guardian(s). These preparations may not be applied to open wounds or broken skin unless there is a written order by the prescribing health care provider.

L. A written medication log must be kept for each child. This log is part of the child's records. The log must contain the following:

1. Child's name and birthdate;

2. name of the medication, dosage, and route;

3. time medication is to be given by written medication authorization;

4. time medication is administered to child;

5. Special instructions;

6. Name and initials of the individuals giving the medication; and

7. Notation if the medication was not given and the reason.

2.221 SUN PROTECTION

A. The center must obtain written authorization and instructions from the parent(s)/guardian(s) for the application of sunscreen or the use of another form of parent(s)/guardian(s) approved sun protection with a full-spectrum ultraviolet A/ ultraviolet B (UVA/UVB) rating of sun protection factor (SPF) thirty (30) or greater to their children's exposed skin prior to outside play year-round. a doctor's permission is not needed to use sunscreen at the center.

B. The center must apply sunscreen, have the parent(s)/guardian(s) apply sunscreen, or use another form of parent/guardian approved sun protection for children prior to children going outside. Sunscreen must be reapplied as directed by the product label.

1. When the parent(s)/guardian(s) applies sunscreen, the center must have a mechanism for documenting application times to ensure sunscreen is reapplied as directed by the product label. If documentation of application time is not available, the center must ensure that sunscreen is applied thirty (30) minutes before going outdoors. If the child will be outside for more than one (1) hour, sunscreen must be reapplied every two (2) hours.

C. When supplied for an individual child, the sunscreen must be labeled with the child's first and last name.

D. If sunscreen is provided by the center, parent(s)/guardian(s) must be notified in advance, in writing, of the type of sunscreen the center will use.

E. Children over four (4) years of age may apply sunscreen to themselves under the direct supervision of a staff member.

F. Infants under six (6) months must be kept out of direct sunlight while outdoors.

CHILD CARE SERVICES

2.222 PERSONAL HYGIENE

A. Diapering

1. All diaper change areas must:

   a. Be a minimum of thirty-six (36) by eighteen (18) inches in size and large enough to accommodate the size of the child;

   b. Have a place inaccessible to children for storing all diaper change supplies and disinfecting solutions and products;

   c. Have a sufficient supply of diapers at all times; and

   d. Be located and arranged to provide privacy for older children in need of diaper changing.

2. Children being diapered must be within arm's reach of the staff member and actively supervised throughout the diapering process.

3. One (1) diaper change area is required in every infant and toddler classroom.

4. One (1) designated diaper change area is required for every twenty-four (24) preschool age children.

B. Toileting

1. There must be no attempt to toilet train children until they are able to communicate or otherwise indicate need, help manage their own clothing, and be able to access toileting facilities.

2. For each child who is learning to use a toilet, the child's individual developmental abilities and needs must be accommodated as stated in the written policies and procedures for the center.

2.223 PHYSICAL CARE AND SUPERVISION

A. General

1. All children must be under the direct supervision at all times of a qualified adult who has been assigned the responsibility to supervise.

2. The time a child arrives and leaves the center each day must be recorded. Staff members must complete written attendance verification periodically throughout the day, including during transitions.

3. Staff must be awake, alert, and actively supervising all children.

4. Staff must directly supervise children and maintain staff to child ratio during special activities that occur with an outside vendor or provider and where the vendor uses their expert staff to facilitate the activity.

5. The staff must ensure that children are dressed appropriately for the weather before going outside.

B. Infant and Toddler Programs

1. Outside of mealtimes, children who are awake must not be confined for more than fifteen (15) minutes at a time to cribs, playpens, swings, highchairs, infant seats, or other equipment that confines movement. Children must have the opportunity for freedom of gross motor movement.

2. Throughout the day, each child must have frequent, individual, personal contact, and attention from an adult, such as being held, rocked, taken on walks inside and outside the center, talked to, read to, and sung to.

3. Staff must investigate whenever children cry, scream, or appear to withdraw and must try to verbally or physically soothe the child. When putting infants to sleep, staff may allow for a period of no longer than ten (10) minutes without verbally or physically soothing the child to enable the infant to try to self soothe and fall asleep.

4. Children must be allowed to form and observe their own pattern of sleep and waking periods. Special provision must be made so that children requiring a morning nap time have a separate area for their nap apart from space used for play.

   a. Children must be allowed to leave their sleeping area immediately upon waking.

C. Safe Sleep Environments for Infants

1. Each infant up to eighteen (18) months of age and enrolled in the infant program must be provided with an individual crib, futon approved for infants, or other approved sleep/rest equipment meeting Consumer Product Safety Commission (CPSC) standards published by the Consumer Product Safety Commission (CPSC) at 16 CFR section 1218.2 (April 23, 2015); 16 CFR section 1219.2 (October 28, 2019); 16 CFR section 1220.2 (June 3, 2023); 16 CFR section 1221.2 (January 20, 2020); 16 CFR section 1222.2 (August 5, 2023); 16 C.F.R. section 1236.2 (June 23, 2022); and 16 C.F.R 1241.2 (February 15, 2022) herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the CPSC at https://www.ecfr.gov. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Bldg. C, Denver, CO 80246, during regular business hours. Individual cribs or futons must provide each infant with sufficient space for the infant's length, size, and movement.

2. In the infant room, soft bedding or materials that could pose a suffocation hazard are not permitted in cribs, futons approved for infants, or other approved sleep/rest equipment. Soft bedding means, but is not limited to, any soft sleep surface like bumper pads, pillows, blankets, quilts, comforters, sleep positioning devices, sheepskins, blankets, flat sheets, cloth diaper bibs, plush toys, pacifiers with stuffed animals attached, and stuffed animals.

   a. Mattresses for cribs and futons must have a properly fitted, clean sheet.

3. Approved sleeping equipment must be firm and mattresses must fit snugly ensuring no more than two fingers are able to be inserted between the mattress and the side of the approved sleeping equipment.

4. Toys, including mobiles and other types of play equipment that are designed to be attached to any part of sleeping equipment, must be kept away from sleeping infants and out of sleep environments, including hanging toys. Blankets and other items must not be hung from or draped over the sides or any part of sleeping equipment.

5. All sleep/rest equipment must be safe, sturdy, and free from hazards including, but not limited to broken or loose slats, torn mattress, chipping paint or loose screws.

6. Drop side and stacking cribs are prohibited.

7. Bassinets and playpens are prohibited in child care centers.

8. Other sleep equipment not manufactured for commercial use is prohibited.

9. An infant must be placed on their back for sleeping.

10. Alternative sleep positions for infants must only be allowed with a health care plan completed and signed by the child's physician.

11. Swaddling of infants must only be allowed with a health care plan completed and signed by the child's health care provider.

12. Each infant up to twelve (12) months of age who uses a pacifier must have the pacifier offered when being put down to sleep unless the parent(s)/guardian(s) direct(s) otherwise.

13. Infant sound monitors must be used in separate sleeping rooms for infants unless qualified staff remain in the room with sleeping infants at all times. When monitors are used, the following conditions must be met:

    a. The sound monitoring equipment is able to pick up the sounds of all sleeping infants;

    b. The receiver of the sound monitoring equipment is actively monitored by staff at all times;

    c. All sleeping infants must be physically observed at least every ten (10) minutes by a staff member;

    d. Sound monitoring equipment must be regularly checked to ensure it is working correctly; and

    e. The monitor must be out of reach of children.

14. Separate sleep rooms are prohibited in new construction, change of governing body, and change of capacity in child care centers.

15. Infants who fall asleep in a piece of equipment not approved for sleep must immediately be moved to their approved sleep area and placed on their back to sleep.

16. Cribs must be used for sleeping, not extended play nor confinement.

17. If music is played in the infant sleep area, the music must not be played at a loud volume that would prevent infants from being heard by staff. Music equipment must not be placed under a crib or within three (3) feet of the sleeping infant.

18. Supervised tummy time must be offered to infants one (1) month of age or older at least four (4) times per day for full day programs for short periods (3-5 minutes) and increase the amount of time as the infant shows they enjoy the activity. If the infant falls asleep during tummy time, immediately place him/her on their back in approved sleeping equipment.

19. When staff place infants in approved sleeping equipment for sleep, they must check to ensure that the temperature in the room is comfortable for a lightly clothed adult, check the infants to ensure that they are comfortably clothed (not overheated or sweaty), and that bibs, necklaces, and garments with ties or hoods are removed.

    a. Clothing sacks or other clothing designed for sleep must be worn in lieu of blankets if needed for additional warmth. Clothing must not restrict the movement of the child's arms or legs.

20. Infants must not be placed to sleep in the same crib or futon as another infant or child at the same time.

D. Rest Time and Equipment

1. Children must not be forced to sleep.

2. In rooms used for napping, the lighting must be dim at nap time to promote an atmosphere conducive to sleep but must be bright enough for supervision of children.

3. When the room provided for rest is used for other program activities, the cots, pads, and linens must be stored in an area that is not included in the required square footage assigned for play space.

4. In the toddler room, a crib, sleeping cot, or two (2) inch mat must be provided for each child, and there must be a minimum of two (2) feet between each crib or cot. Aisles between cots or cribs must be kept free of all obstructions while cribs are occupied. No child less than the age of two (2) years should use a cot for sleeping without written permission of the parent or guardian.

    a. Individual cribs must provide each toddler with sufficient space for the toddler's length, size, and movement, and must meet federal Consumer Product Safety Commission standards, as incorporated in rule section 2.223(C). Each crib must be fitted with a firm, comfortable mattress. If individual cribs are used, they must be separated by a sturdy divider from the area used for activities.

    b. Sleeping cots and mats must be of firm construction and in good repair.

    c. A fitted sheet and a blanket, or suitable covering, must be provided for each child to be used only by that child.

5. If preschool-age children are in care for longer than five (5) hours, the center must provide at least a thirty (30) minute rest period meeting the following:

    a. A firm cot or two (2) inch mat with a sheet and blanket, or other suitable covering, must be provided for each child;

        (1) Cots or pads must be spaced at least two (2) feet apart on all sides during rest time. Children must have a safe area in which to rest that is easily supervised, out of the path of traffic, and free of hazards.

b. Quiet activities must be available for children who do not sleep during the thirty (30) minute period. Older children requiring a rest time must be given one;

c. Children who do not sleep after thirty (30) minutes must be allowed to move to another area and be provided with quiet toys and equipment to play with such as puzzles or books; and

d. Children who fall asleep must be allowed to leave their napping area within ten (10) minutes of waking.

2.224 FOOD AND NUTRITION

A. Meals and Snacks provided by the center

1. All meals and snacks provided by the center must meet current United States Department of Agriculture (USDA), Child and Adult Care Food Program (CACFP) meal pattern guidance and requirements published by the USDA Food Nutrition Service at https://www.cacfp.org/meal-pattern-guidance/ (April 2016) and 7 C.F.R. sections 210.10 and 226.20 (July 1, 2022), herein incorporated by reference. No later editions or amendments are incorporated These regulations are available at no cost from the USDA Food Nutrition Service at https://www.ecfr.gov. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Bldg. C, Denver, CO 80246, during regular business hours. and be offered at suitable intervals not more than three (3) hours apart. Children who are at the center for more than four (4) hours, day or evening, must be offered a meal. Arrangements must be made for feeding children who are in care before 6 a.m. or after 6 p.m.

2. If 100% fruit juice, which is not a sugar sweetened beverage, is offered as part of meals and/or snacks, it must be limited to no more than two (2) times per week.

3. Centers must not provide sugar sweetened beverages to children. These are beverages that have been sweetened with various forms of sugars that add calories and include, but are not limited to: soda, fruitades, fruit drinks, flavored milks, and sports and energy drinks.

4. The size of servings must be suitable for the child's age and sufficient time must be allowed so that meals are unhurried.

5. Foods offered shall be age appropriate and not pose a choking hazard.

6. In centers that do not regularly provide a meal, if a child brings a meal from home that does not appear to meet current USDA Child and Adult Care Food Program meal pattern requirements, the center must have foods available to offer as a supplement to that meal.

7. Staff members must sit with the children and encourage them to try a variety of food served. During meals, children should be encouraged to engage in conversation and to express their independence.

8. Children must not be given foods that are contrary to the religious beliefs of their families or that are known to cause an allergic reaction or a health hazard.

9. Food and beverages are not to be used as a reward.

10. Meal menus must be planned at least one week in advance, dated, and posted in a place visible to parents. After use, menus must be filed and retained for three (3) months.

11. A table, counter, or shelf, separate from the diaper changing area, must be available for preparing infants' and toddlers' food.

B. Feeding the Infant

1. An individualized diet and feeding schedule must be provided according to a written plan submitted by the parent or by the child's physician with the knowledge and consent of the parent. A change of diet and schedule must be noted on each child's daily activity schedule and posted in an area clearly visible to the staff.

2. All infants less than six (6) months of age must be held for bottle feeding. Bottles must not be propped. Older infants must not be allowed to hold their own bottles when lying flat. Bottles must not be allowed in a crib with the infant.

3. Older infants must be provided with suitable solid foods that encourage freedom in self-feeding and must be fed in safe chairs such as highchairs or baby-feeding tables.

4. When the infant program provides food other than breast milk or formula, food must be varied and include food from cereal, vegetable, fruit, and protein sources. When the center does not provide solid food, it must supply any additional foods and/or monitor the infant's total nutritional intake.

5. A staff member may not mix cereal with breast milk or formula and feed it to an infant from a bottle or infant feeder unless there are written instructions from the child's health care provider.

6. In infant nurseries, an adequate number of highchairs, or other suitable pieces of equipment that meet federal Consumer Product Safety Commission standards published by the Consumer Product Safety Commission (CPSC) at 16 CFR sections 1112 and 1321 (June 19, 2019), herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the CPSC at https://www.ecfr.gov. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Bldg. C, Denver, CO 80246, during regular business hours;, must be provided for infant feeding.

7. Children who are actively eating may be in a highchair or other approved feeding equipment for longer than fifteen (15) minutes. Children must be moved once feeding is complete.

C. Feeding the Toddler

1. Staff members must either feed toddlers or supervise them when they are eating, and children must be encouraged to try a variety of food served.

2. Toddlers must be sitting when eating or drinking.

3. Children who are actively eating may be in a highchair or other approved feeding equipment for longer than fifteen (15) minutes. Children must be moved away from the feeding location once feeding is complete.

2.225 GUIDANCE

A. Guidance used at the center must be appropriate to the development of the child and is used as an opportunity to teach children social-emotional skills, such as self-regulation, problem-solving, and empathy for others.

B. Children must not be subjected to physical or emotional harm, humiliation, or threats.

C. The director must not use, or permit a staff person or child to use, corporal punishment as defined in section 22-1-140, C.R.S.

D. Guidance must not be associated with food, rest, or toileting. No child should be punished for toileting accidents. Food must not be denied to or forced upon a child as a disciplinary measure.

E. Physical activity and outdoor time must not be withheld as a disciplinary measure.

F. Separation, when used for guidance, must not exceed five (5) minutes and must be appropriate for the child's development. The child must be in a safe, lighted, well-ventilated area and be within sight and hearing of an adult. The child must not be isolated in a locked, closed room, or closet.

G. Verbal abuse and derogatory remarks about the child are not permitted.

H. Any form of restraint is not permitted.

I. Physical redirection may be used to keep a child from immediate imminent danger. The child must be immediately released once removed from imminent danger.

2.226 ACTIVITIES

A. Activity Schedules

1. The center must carry out a planned program suitable to the needs of the children. This program must be described in writing and be available for review when requested by the Department or by parents or guardians of children in care.

2. Daily physical gross motor activities, with or without equipment or materials, must be provided outdoors, or indoors during inclement weather, to children toddler age and older for no less than sixty (60) minutes total for full day programs. Activities do not have to occur all at once.

    a. Programs who qualify for an outdoor space hardship per rule section 2.232(B), must provide daily physical gross motor activities indoors or outdoors.

3. Children’s access to outdoor space must be provided daily, except during inclement weather.

4. Infants must be provided access to outdoor play at least three (3) times per week, weather permitting.

5. If the center takes children on routine short excursions, such activities and locations must be posted at the center.

6. Portable first aid kits must be available to staff at all times, including field trips and short excursions, and must be checked and restocked on at least a monthly basis.

7. If a child participates in activities away from the facility, the center must obtain the parent or guardian's written permission for the child to participate in the activity at a specific location and day. Staff ratios found at rule section 2.217, must be maintained.

B. Screen Time and Media Use

1. Screen time, which includes, television, recorded media, computer, tablet, cell phones, video games, and other media devices, is prohibited for children less than two (2) years of age.

2. Screen time is prohibited during snack or meal times.

3. All media that children are exposed to must not contain explicit language or topics.

4. For children two (2) to five (5) years of age, screen time must be limited to no more than thirty (30) minutes per day.

5. For children two (2) years of age and older, screen time may only exceed sixty (60) minutes for a special occasion and must not occur more than once every two (2) weeks.

6. All children must be provided with a developmentally appropriate alternative activity once the child(ren) loses interest in the media activity.

7. There is no time restriction for children using personal adaptive equipment or assistive technology or participating in mandatory school activities.

C. Field Trips

1. The center must notify the children's parents or guardians in advance of any field trip. The staff-child ratio found at rule section 2.217, must be maintained at all times.

2. All groups of children must be actively supervised by a qualified early childhood teacher at all times.

3. Children must be actively supervised at all times.

4. An accurate itinerary must remain at the center.

5. When taking children on a field trip, staff must have the following information about each child: name, address, and phone number of the child's physician or other appropriate health care professional and the written authorization from the parent or guardian for emergency medical care.

6. If children attending the field trip require routine medications be administered during the field trip or have special health needs, a staff member with current medication administration training and delegation must attend on the field trip.

7. A list of all children and staff on a field trip must be kept at the center.

2.227 TRANSPORTATION

A. Transportation Provided by the Center

1. The center is responsible for any children it transports.

2. The center must obtain written permission from the parent(s)/guardian(s) for any transportation of their child(ren) while in care.

3. The number of staff members who accompany children when being transported in the vehicle must meet the child care staff ratio found at rule section 2.217. The driver of the vehicle is considered a staff member.

4. Children must not be permitted to ride in the front seat of a vehicle and must remain seated while the vehicle is in motion. All children must be secured in a child restraint system that is appropriate for the age and development of that child that meets the requirements of the Colorado child passenger safety laws at sections 42-4-236 and 42-4-237, C.R.S.

5. Children must be loaded and unloaded out of the path of moving vehicles.

6. Children must not be permitted to stand or sit on the floor of a moving vehicle, and their arms, legs, and heads must remain inside the vehicle at all times.

7. Children must not be left unattended in the vehicle.

8. Transportation arrangements for school-age children must be by agreement between the center and the children's parents, *i.e.*, whether the child can walk, ride a bicycle, or travel in a car. The center must monitor the children to be sure they arrive at the center when expected and follow up on their whereabouts if they are late. Written permission from parents or guardians for their children to attend community functions after school hours must include agreements regarding transportation.

9. Prior to a field trip or other excursion, the center must obtain information on liability insurance from parents and staff who transport children in their own cars and verify that all drivers have valid driver's licenses.

10. Attendance must be verified as children enter and exit the vehicle to ensure all children are accounted for.

B. Requirements for Vehicles

1. Any vehicle used for the transportation of children to and from the center or during center activities must meet the following requirements:

   a. The vehicle must be enclosed and have working door locks;

   b. The seats of the vehicle must be constructed and installed according to the vehicle manufacturer's specifications;

   c. The vehicle must be kept in satisfactory condition to ensure the safety of occupants.;

   d. Seating must be comfortable with a seat of at least ten (10) inches wide for each child;

   e. The provider must not transport more children than any vehicle is able to safely accommodate when child restraint systems and seat belts are properly installed in the vehicle. Two (2) or more children must never be restrained in one (1) seat belt or child restraint system; and

   f. Modifications to vehicles including, but not limited to, the addition of seats and seat belts must be completed by the manufacturer or an authorized representative of the manufacturer. Documentation of such modifications must be available for review.

2. Any child transported must be properly restrained in a child restraint system that meets the requirements of the Colorado child passenger safety laws at sections 42-4-236 and 42-4-237, C.R.S., that requires:

    a. Children under the age of one (1) years and weighing less than twenty pounds, must ride the back seat of the vehicle, in a rear-facing child restraint system, according to the vehicle and child restraint systems manufacturer's instructions.

    b. Children ages one (1) to four (4) years and who weigh twenty (20) to forty (40) pounds must be properly restrained in a rear- facing or forward-facing child restraint system, according to the vehicle and the child restraint systems manufacturer's instructions.

    c. Children who are under eight (8) years of age and who are being transported, shall be properly restrained in a child restraint system, according to the vehicle and child restraint system manufacturer's instructions.

    d. Children who are at least eight (8) years of age but less than sixteen (16) years of age who are being transported, shall be properly restrained in a safety belt or child restraint system according to the vehicle and child restraint system manufacturer's instructions.

        (1) Children who meet the requirements to be restrained in a safety belt must be instructed and monitored to keep the seat belt properly fastened and adjusted.

    e. Two or more children must never be restrained in one (1) seat belt or child restraint system.

3. In vehicles with a manufacturer's established capacity of sixteen (16) or more passengers, seat belts for passengers are not required.

C. Requirements for Drivers of Vehicles

1. All drivers of vehicles transporting children must operate the vehicle in a safe and appropriate manner.

2. All drivers of vehicles owned or leased by the center in which children are transported must have a current Department-approved first aid and safety certificate that includes cardiopulmonary resuscitation (CPR) for all ages of children.

3. In each vehicle used to transport children, drivers must have access to a First Aid kit.

4. The driver must ensure that all doors are secured at all times when the vehicle is moving.

5. The driver must make a good faith effort to ensure that each child is properly belted throughout the trip.

6. The driver must not eat, smoke, or use a cellular device while driving.

7. The required staff to child ratio must be maintained at all times.

8. All drivers must be at least twenty (20) years of age.

9. Drivers must complete a minimum of four (4) hours of Department-approved driver training. The Department's approval will be based on the review of a training curriculum that includes at a minimum: behind the wheel training; participant transport attendance procedures including taking attendance at the destination; managing behavioral issues; loading and unloading procedures; daily vehicle inspection procedure; proper tire inflation; emergency equipment and how to use it; accident procedures; passenger illness procedures; procedures for backing up; and vehicle evacuation.

D. Transporting Infants and Toddlers

1. Children must be properly restrained in a child restraint system that meets the requirements of the Colorado child passenger safety laws at sections 42-4-236 and 42-4-237, C.R.S., applicable Federal Motor Vehicle Safety Standards pursuant to Colorado law.

2. There must be at least one (1) adult, in addition to the driver, for each five (5) or fewer infants/toddlers being transported. Each adult must have a current Department-approved First Aid and Safety certificate that includes CPR for all ages of children.

3. An adult must accompany each child to and from the vehicle.

4. Infants and toddlers must not be transported in the front seat of a vehicle.

2.228 OVERNIGHT CARE

A. All of the provisions required in rule section 2.200 of these rules for child care centers apply to centers offering overnight care of children which includes care that extends beyond midnight. In addition, centers must observe the following provisions:

1. A nutritious evening meal must be made available to children. If provided by the center, the meal must meet current USDA Child and Adult Care Food Program meal pattern requirements, as incorporated in rule section 2.224.

2. Quiet activities must immediately precede the children's bedtime.

3. Children's faces and hands must be washed, children's teeth must be brushed according to the child's age, and children must be changed into comfortable clothing for sleeping.

4. Each child must be provided with a comfortable separate bed, crib, or cot suitable for the child's age or a two (2) inch sleeping mat or mattress. Each child must also be provided with sheets and a clean, washable covering. If mats or mattresses are used, the room temperature at floor level must be sixty-eight (68) to seventy-two (72) degrees. Pads and mattresses must be fitted with a clean, washable, removable covering. Permission of parents/guardians must be obtained for each child who uses a sleeping mat or mattress placed on the floor.

5. Staff must be awake, alert, and actively supervising all children.

6. The staff-child ratio for sleeping children is one (1) adult to every six (6) or fewer children in attendance. Once one (1) child is awake, the staff-child ratio as defined in rule section 2.217, must be maintained.

CHILD CARE EQUIPMENT AND MATERIALS

2.229 GENERAL REQUIREMENTS

A. Durable furniture such as tables and chairs must be child-sized or appropriately adapted for children's use.

B. Window blind cords must be secured out of children's reach to prevent strangulation.

C. Items labeled “keep out of reach of children” must be inaccessible to children.

D. Staples must be inaccessible to children less than three (3) years of age.

E. Thumb tacks must not be used in areas accessible to children less than three (3) years of age.

F. Glitter must not be used with children under three (3) years of age.

G. Loose plastic bags must be stored in areas inaccessible to children.

H. Sharp tools and instruments must be stored in areas inaccessible to children.

I. For every five (5) infants for which the center is licensed, there must be at least one (1) piece of sturdy mobile equipment that is easily accessible to safely and effectively evacuate infants.

J. If using a crib is not designed for emergency evacuation, the crib must be reinforced with a kit manufactured for this purpose.

K. Evacuation equipment must not block exit routes. Nothing may be stored in or under any evacuation equipment.

Evacuation equipment must:

1. Be located in the room or immediately outside the interior classroom door;

2. Be labeled for easy identification;

3. Be ready for use; and

4. Fit through doorways.

L. Toys, toy parts, furnishings, equipment, and any materials accessible to children under than three (3) years of age must not be a choke hazard or able to be inhaled. Any area of the facility accessible to children less than three (3) years of age must be free of any choke or inhalation hazards.

M. Toys, toy parts, furnishings, equipment, and materials made of brittle, easily breakable plastic or glass are not permitted for children less than five (5) years of age.

N. The infant program must have an adult rocking chair.

O. In the infant program, some play equipment from the following list must be provided: rubber washable toys, rattles, blocks, balls, and music player.

P. Some sand or equivalent dry material or water play should be offered to children eighteen (18) months of age or older, indoors or outdoors, at least monthly and year-round.

Q. At least three (3) examples of materials must be available to the children that are developmentally appropriate, culturally sensitive, and represent diversity in ethnicity, race, gender, age, and abilities. Variety must exist in toys, books, and pictures.

R. The center must have enough play materials and equipment so that at any one time each child for which the center is licensed for can be individually involved. Separate play rooms or separate interest centers must be provided for each category of equipment required for the program. A variety of material and equipment from the following categories must be available:

1. Art;

2. Blocks and accessories;

3. Books and pictures;

4. Dramatic play;

5. Gross motor;

6. Manipulatives;

7. Music; and

8. Science and math.

S. In the toddler program, some play materials and equipment easily accessible to children must be provided from each of the following categories:

1. Books and pictures;

2. Dramatic play;

3. Gross motor;

4. Manipulatives; and

5. Music.

T. If the center serves school-age children, it must have some age-appropriate materials and equipment from each of the following categories:

1. Arts and crafts;

2. Games;

3. Sports;

4. Science and math; and

5. Literature.

U. An appropriate supply of play materials must be readily accessible to children and must be arranged in an orderly manner so that children can select, remove, and replace the play materials either independently or with minimum assistance.

2.230 INDOOR/OUTDOOR EQUIPMENT, MATERIALS, AND SURFACES

A. A variety of play equipment and materials appropriate for children's age, size, developmental needs, and activities must be provided for both indoor and outdoor structured and free play.

1. Programs who qualify for an outdoor space hardship per rule section 2.232(B)(1) are not required to provide equipment and materials for outdoor play.

B. Indoor and outdoor equipment, materials, and furnishings must be sturdy, safe, and free of hazards.

C. All other indoor or outdoor playground facilities, with permanently installed or portable climbing equipment, without an annually certified playground inspection must meet the following requirements:

1. Resilient Surfacing

a. All climbing equipment eighteen (18) inches or higher must have resilient surfacing of at least six (6) inches in the use zone surrounding the equipment.

b. Department-approved resilient surfacing includes loose fill materials such as wood chips, wood mulch, engineered wood fiber, pea gravel, synthetic pea gravel, shredded rubber tires, and sand. Solid unitary materials include poured in place surfacing, approved rubber mats, playground tiles, and Astroturf with built in resilient pad.

c. Loose fill resilient surface must be raked regularly to retain its resiliency and to retain a depth of at least six (6) inches.

d. Any newly installed solid unitary materials used for resilient materials must have written documentation from manufacturer stating the material meet current federal safety standards. The documentation must be available for review at all times.

2. Maximum Height of Equipment

a. The maximum height for toddler climbing equipment cannot exceed thirty-two (32) inches.

b. The maximum height for preschool and school-age climbing equipment must not exceed six (6) feet in height with six (6) inches of Department-approved resilient surfacing.

3. Use Zone

a. Toddler climbing equipment must have a three (3) foot use zone surrounding the equipment. Toddler slides require a six (6) foot use zone extending out from the base of the slide.

b. The use zone for swings used by toddlers is determined by measuring the distance from the top of the swing to the bottom of the bucket seat. This measured distance must extend from both the front and the back of the swing.

c. Preschool and school-age climbing equipment must have a six (6) foot use zone surrounding the equipment. For slides exceeding six (6) feet in height, the use zone from the base of the slide must be as long as the slide height.

d. The use zone for swings used by children preschool age and older is determined by measuring the distance from the top of the swing to the ground. This measured distance must extend from both the front and the back of the swing.

4. Moving equipment must be located toward the edge or corner of a play area or be designed in such a way as to discourage children from running into the path of the moving equipment.

5. Metal equipment must be placed in the shade.

6. All pieces of playground equipment must be designed to guard against entrapment and strangulation. Any openings in gross motor equipment above ground must be smaller than three and one half (3 ½) inches or greater than nine (9) inches to prevent entrapment.

7. Swings must have seats made of a flexible material and all "S" hooks must be secured.

8. All outdoor play areas used for children's activities must be checked daily and kept safe and free from hazardous materials or debris by removal of debris, dilapidated structures, and broken or worn play equipment. The staff must identify hazardous, high-risk areas; those areas must be made inaccessible to children to reduce the possibility of injuries and accidents.

D. For purposes of a playground facility inspection, the Department shall accept as satisfactory proof of valid certification of the playground facility, certification, or a copy of certification, from an individual who is licensed or certified to perform playground safety inspections through the National Recreation and Park Association, or other nationally recognized playground facility safety organization. The Department shall not require a duplicate inspection if there is a satisfactory inspection report.

1. All playground facilities who hold a certified playground safety inspection must maintain resilient surfacing in compliance with the certification.

E. Children must wear helmets when riding scooters, bicycling, skateboarding, or rollerblading. The helmet must be removed after the activity. Motorized riding toys are not permitted.

F. Trampolines and inflatable bouncers are prohibited.

2.231 INDOOR LEARNING ENVIRONMENT

A. Indoor Space Requirements

1. There must be open, indoor play space of at least thirty (30) square feet of floor space per child, including space for movable furniture and equipment. For space to be counted in the square footage calculation, the space must be accessible and used by children.

2. Indoor play areas must be uncluttered, safe, and allow for freedom of movement.

3. Adequate storage space must be provided for indoor and outdoor equipment and supplies.

4. Number of Children Allowed in One (1) Room

AGE OF CHILDREN	MAXIMUM NUMBER OF CHILDREN IN A ROOM
6 weeks to 18 months	10 infants
12 months to 18 months	10 infants
12 months to 36 months	20 toddlers

18 months to 24 months	20 toddlers
24 months to 36 months	28 toddlers
30 months to 36 months	28 toddlers

5. Square Footage Requirement per Child

AGE OF CHILD	SEPARATE FREE PLAY AREA	SEPARATE SLEEP AREA	COMBINED SLEEP AND PLAY AREA
6 weeks to 18 months (infants)	35 square feet	Adequate space to accommodate size of cribs and needs of infant and staff	50 square feet
12 months to 36 months (toddlers)	30 square feet	30 square feet	45 square feet
2-1/2 years to 5 years (preschool)	N/A	N/A	30 square feet
5 years and over (school-age)	N/A	N/A	30 square feet

6. In the infant program, the minimum indoor space per infant for sleep and activities is fifty (50) square feet.

    a. In a combination sleep/activity rooms, the sleep area must be separated by a sturdy divider from the area used for activities, and cribs must be arranged so that all infants and cribs are easily accessible to staff members.

2.232 OUTDOOR LEARNING ENVIRONMENT

A. Outdoor Space Requirements

1. Readily accessible gross motor play space and access to outdoor space must be provided.

2. The outdoor learning environment for preschool age and older must provide a minimum of seventy-five (75) square feet of space per child for a group of children using the total play area at any one time. the total play area must accommodate at least thirty-three percent (33%) of the licensed capacity for children preschool age and older or a minimum of 1,500 square feet, whichever is greater.

    a. Programs who qualify for an outdoor space hardship per rule section 2.232(B)(1), must meet the minimum outdoor learning environment square footage requirements indoors or through a combination of indoor and outdoor space.

3. The play area must be fenced or have natural barriers, such as hedges or stationary walls at least four (4) feet high, to restrict children from unsafe areas.

    a. Centers licensed to provide care for preschool-age children only may use the centers perimeter fencing if they maintain a ratio of one (1) staff member to eight (8) children.

4. The play area must be designed so that it is easily supervised.

5. A minimum of one hundred fifty (150) square feet of shaded area in the fenced play area must be provided to guard children against the hazards of excessive sun and heat. Shaded areas must be provided year-round.

6 In the infant program, the outdoor play area must be a minimum of four hundred (400) square feet.

7. In the infant program, the outdoor area can be used by other age groups at the center, but it must not be used by any other group of children while infants are using it.

8. The total outdoor play area for toddler age groups must be a minimum of seven hundred fifty (750) square feet if licensed for ten (10) toddlers and one thousand fifty (1,050) square feet if licensed for fourteen (14) or more toddlers, or seventy-five (75) square feet per child for the largest group size for which the program is licensed.

9. In the toddler program, the outdoor play area can be shared by infants, but infants and toddlers must not be allowed to use the play area at the same time.

B. Outdoor Space Hardship

1. If an outdoor play space is not directly attached to the facility or accessible via secure access, or the child care facility cannot meet outdoor space requirements due to a hardship based on the location of the facility, the facility must develop a site-specific plan, which will be submitted to the Department for review and approval, that includes the following:

a. Identification of an accessible (appropriate for the age group of children served) alternate outdoor space including a description and approximate square footage of the space;

b. A diagram outlining how children will safely travel to and from this location;

c. A plan for supervision, including any special staffing requirements, to safely access and utilize the alternate outdoor space that includes:

(1) Attendance tracking upon arrival to the outdoor space and return to the facility;

(2) Children’s toileting and diapering needs;

(3) Children’s routine and emergency medical needs including the use of first aid kits and accessibility of emergency contact information when not on site at the child care facility;

(4) Plans for alternate activities if the outdoor space is unavailable; and

(5) If play equipment or climbing structures are present in the outdoor space, a plan for assessing safety of equipment and supervising age-appropriate play.

d. An emergency evacuation plan including the location of a secondary site for reunification with parents in the case of an emergency while at the offsite location and plans for accessing shelter in the case of emergency; and,

e. A policy that notifies the parent(s)/guardian(s) of the alternate outdoor space.

2. If the outdoor space becomes unusable or the program cannot maintain what was approved in the plan, the program must submit a new plan to the Department within ten (10) calendar days of a change in the usability of such outdoor space.

3. Child care facilities licensed prior to December 1, 2021, may not reduce or eliminate existing licensed outdoor space to qualify for the outdoor space hardship.

BUILDINGS AND FACILITIES

2.233 BUILDING SITE

A. General

1. Centers can be located in a private residence only when that portion of the residence to which children have access is used exclusively for the care of children during the hours the center is in operation or is separate from the living quarters of the family.

2. No other business can operate in the rooms used by the center during the hours of child care.

3. Rooms licensed for specific ages of children cannot be used for other ages of children without the prior written approval of the licensing authority.

4. Prior to licensure, if the infant or toddler program is located on a floor above or below the main floor of egress leading directly outside, the child care facility must develop and submit an alternate location plan for approval by the Department that includes following:

a. Fire department and building department approval per the locally adopted fire and building codes;

b. An emergency evacuation plan with identified primary and secondary areas of refuge;

c. Any special equipment necessary to operate in and evacuate safely from the alternate location; and

d. Any special staffing and training requirements to ensure the ability to safely evacuate the alternate location.

B. Infant Programs

If the infant program is in the same building as a facility caring for children of other ages, the infant program must be physically separated in different rooms by walls no less than eight (8) feet and full doors.

C. Toddler Program

1. If the toddler program is in the same building as a facility caring for children of other ages, the toddler program must be physically separated in different rooms by walls no less than eight (8) feet and full doors.

2. If the toddler program is combined with a large child care center or an infant program, toddler facilities, both indoor and outdoor, must be completely separate from facilities for other age groups, except as allowed by rule sections 2.232(A)(6) and (8). If the facility

wishes to provide opportunities for a toddler to have occasional contact with siblings, plans must be approved by the Department licensing representative.

2.234 BUILDING PLANS AND CONSTRUCTION

A. The center must comply with applicable state and local building and fire codes.

B. Prior to construction, architectural plans for new buildings or for remodeling of existing buildings must be submitted for review and approval by the Department, the local fire department, and the local building department as to appropriateness, adequacy, and suitability for child care functions.

2.235 TOILET FACILITIES

A. Toilet facilities for the staff and other adults must be in separate restrooms or be separated by a partition from children's facilities, except in centers licensed for thirty (30) or fewer children and in centers with programs of four (4) hours or less.

1. In toilet facilities where the adult and children’s facilities are separated by a partition, adults and children must not use the facilities at the same time.

2. After January 1, 2022, staff and children toilet facilities must be separate in new construction.

B. Toilet facilities for children must be separate from rooms used for other purposes and must be located on the same floor as the inside play area.

C. A minimum of one (1) sink and one (1) flush toilet must be provided for each fifteen (15) or fewer children.

D. The same toilet facilities must not be used simultaneously by school-age children of all genders, and toilets for school-age children must be separated by partitions to provide privacy.

1. School-age children must be allowed the use of toilet facilities that correspond with their gender identity.

E Toilet facilities must be provided for children two (2) years of age and older.

F. Toilet facilities for toddlers must be located within their classroom.

2.236 OFFICE FACILITIES

A. Office space separate from areas used by children must be provided for staff to perform administrative duties.

1. If the office space is accessible to children, it must be free of hazards.

B. The office must have sufficient space for maintenance and safe storage of children's and staff records and the center's business records.

SAFETY REQUIREMENTS

2.237 GENERAL REQUIREMENTS

A. Firearms as defined in section 18-1-901(3)(h), C.R.S., are prohibited on the premises, both indoor and outdoor, and in any vehicle in which children are transported.

B. Buildings must be kept in good repair and maintained in a safe condition.

C. Major cleaning is prohibited in rooms occupied by children.

D. Volatile substances such as gasoline, kerosene, fuel oil, oil-based paints, firearms, explosives, and other hazardous items must not be stored in any area of the building used for child care.

E. Combustibles such as cleaning rags, mops, and cleaning compounds must be stored in well-ventilated areas, separated from flammable materials, and stored in areas inaccessible to children.

F. All heating units, gas or electric, must be installed and maintained per the manufacturer's specifications with safety devices to prevent fire, explosions, and other hazards. No open-flame gas or oil stoves, unscreened fireplaces, hot plates, or unvented heaters can be used for heating purposes. All heating elements, including hot water pipes, must be insulated or installed in such a way that children cannot come in contact with them.

G. Combustible materials must not be stored in hallways, stairways, boiler rooms, mechanical rooms, or electrical equipment rooms.

H. In rooms used by children, all electrical outlets that are accessible to children must have protective covers, or safety outlets must be installed.

I. Permanently located battery-powered lights must be provided in locations readily accessible to staff in the event of electric power failure. Batteries must be checked regularly.

J. Closets, attics, basements, cellars, and furnace rooms must be kept free from accumulation of extraneous materials such as furnishings, newspapers, and magazines.

K. Kitchens, including all hazardous items, must be inaccessible to children at all times.

2.238 FIRE SAFETY

Centers must comply with the locally adopted fire code, including but not limited to the following:

A. Every building and structure must have the minimum required number of exits to permit the prompt escape of occupants in case of fire or other emergency. Additional safeguards must be provided for life safety in case any single safeguard is ineffective due to some human or mechanical failure.

B. Every building or structure must be constructed, arranged, equipped, maintained, and operated as to avoid undue danger to the lives and safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time reasonably necessary for escape from the building or structure in case of fire or other emergency.

C. In every building or structure, exits must be arranged and maintained so as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. No lock or fastening to prevent free escape from the inside of any building can be installed. Only panic hardware or single-action hardware is permitted on a door or on a pair of doors. All door hardware must be within the reach of children.

D. No children younger than school age can be cared for in areas above or below the main floor of exit unless in compliance with all Codes and Standards as adopted by the local jurisdiction and approved by the local fire department, or except as provided in the location exception in rule section 2.233(A)(4).

E. One (1) exit from each room must be directly to the exterior of the building or to a common hallway leading to the exterior. The exit path must not go through an intervening room such as a bathroom, another classroom, storage room, or kitchen.

F. All stairways, interior and exterior, that are used by children must be provided with handrails within reach of the children.

G. Regardless of the number of staff and children, exit doors shall be openable from the inside without the use of a key or any special knowledge or effort. Dead bolts may be installed on the main exit door, but the lock cannot be used during business hours, and there must a sign indicating that "this door must remain unlocked during business hours."

H. Every exit must be clearly visible, or the route to reach it must be conspicuously indicated. Each path of escape must be clearly marked.

I. Fire alarm and fire sprinklers must be provided in accordance with the locally adopted fire code. If a fire alarm system is installed, it must be used to warn occupants of the existence of fire or to facilitate the orderly conduct of fire exit drills.

DROP-IN, PART DAY, MOBILE PART-DAY PRESCHOOL, TEEN PARENT PROGRAMS, AND CHILD CARE PROGRAMS AND PRESCHOOLS OPERATED BY PUBLIC SCHOOL DISTRICTS

2.239 DROP-IN PROGRAMS

A. Director Requirements

1. The director or assistant director of an extended hour drop-in child care center operating at least six (6) calendar days per week must be present at the center or involved in director activities at least fifty percent (50%) of the hours of operation of any day the center is in operation.

    a. If the director is not on site at the center for a portion of any day that center is in operation, the director must be available by phone.

    b. The director must be present in the center at least thirty (30) hours each week.

2. Whenever the director of a drop-in child care center cannot be present fifty percent (50%) of any day the center is in operation, an assistant director that meets one (1) of the following qualifications must be present:

    a. At least one (1) year of experience as a qualified early childhood teacher at the drop-in child care center;

    b. Eighteen (18) months of experience as a qualified early childhood teacher with children less than twelve (12) years of age and at least six (6) months experience at the drop-in child care center;

    c. A Bachelor's, Master's, or Doctorate degree from an accredited college or university in one (1) of the human services fields below:

        (1) Child Development;

        (2) Child Psychology;

        (3) Early Childhood Education;

(4) Early Childhood Special Education;

(5) Educational Leadership and Administration;

(6) Elementary Education;

(7) Family and Human Development;

(8) Family Studies;

(9) Special Education; or

d. Qualification as an early childhood teacher and completion of at least half of the required coursework for director qualifications, including one (1) of the following administration classes:

(1) Administration Of Early Childhood Care and Education Programs; or

(2) Administration Human Relations for Early Childhood Professions or Introduction to Business.

B. Staff to Child Ratios

1. Drop-in child care centers may follow a ratio of one (1) adult for every eight (8) children for children in a mixed age group of two (2) years of age to twelve (12) years.

2. One (1) to two (2) children, one (1) year of age to two (2) years of age, may join the preschool age group of children for short periods of time for structured activities.

C. Health Care

1. For children attending a drop-in center, the parent(s)/guardian(s) of each child must submit a statement of the child's current health status or written verification of a scheduled appointment with a health care provider within thirty (30) calendar days or by the second visit, whichever is longer. The statement of the child's current health status must be signed and dated by a health care provider who has seen the child within the last twelve (12) months, or within the last six (6) months for children less than two and one-half (2 ½) years of age. Subsequent statements are not required if there have been no health changes in the child and the parent(s)/guardian(s) attest in writing to the health status of the child on an annual basis. Children attending drop-in child care with special medical needs must have the statement from a health care provider as indicated in rule section 2.219(B).

D. Rest Time Equipment

1. Drop-in child care centers must provide mats or cots for at least fifty percent (50%) of the licensed capacity of the center.

E. Play-Equipment and Materials

1. Drop-in child care centers must provide indoor gross motor equipment, including, but not limited to, an indoor climbing structure, an open area for indoor, and must provide gross activities at least two (2) times during each six (6) hour period of time.

F. Building Site- Toddler Program

1. A toddler program located in a drop-in child care center licensed for five (5) or fewer toddlers may be separated from the rest of the center by a five (5) foot wall.

2. Drop-in child care centers must provide a minimum of one (1) sink and one (1) toilet for each twenty (20) or fewer children.

3. Toilet facilities are not required to be located in the toddler classroom for drop-in child care centers licensed for ten (10) or fewer toddlers.

2.240 PART-DAY PROGRAMS

A. Safe Sleep Environment

1. Supervised tummy time must be offered to infants one (1) month of age or older at least two (2) times per day for part day programs for short periods (3-5 minutes) and increase the amount of time as the infant shows they enjoy the activity. If the infant falls asleep during tummy time, immediately place him/her on their back in approved sleeping equipment.

B. Gross Motor Activities

1. Daily gross motor activities, with or without equipment or materials, must be provided outdoors, or indoors during inclement weather. Activities do not have to occur all at once.

   a. Programs who qualify for an outdoor space hardship per rule section 2.232(B)(1), must provide daily physical gross motor activities indoors or outdoors.

2. Daily physical gross motor activities must be provided for children toddler age and older based on the program's hours of operation:

   a. For programs operating up to three (3) hours per day, fifteen (15) minutes of gross motor activities is required.

   b. For programs operating between three (3) and five (5) hours per day, thirty (30) minutes of gross motor activities is required.

2.241 MOBILE PART-DAY PRESCHOOL PROGRAMS

A. Policies

1. Written schedules must be provided to parent(s)/guardian(s) and the Department. Any changes to location must be provided to parent(s)/guardian(s) and the Department in advance.

2. The program must have an emergency evacuation plan and location.

   a. The program must develop a plan for transporting children, specific to each mobile unit, in the case of an emergency. The plan must be approved by the Department prior to caring for children.

B. Staff Qualifications

1. There must be a large child care center qualified director available during operating hours. A director can oversee multiple mobile preschool programs under the same governing body.

2. Each mobile preschool program must have a qualified early childhood teacher on site.

C. Supervision

Children must be directly supervised when entering and exiting the mobile preschool.

D. Child Care Equipment and Materials

1. A variety of developmentally appropriate materials, equipment, and learning activities from the following categories must be available so that for any one time at least half of the children for which the program is licensed can be individually involved:

   a. Art;

   b. Blocks and accessories;

   c. Books and pictures;

   d. Imaginative play;

   e. Manipulatives;

   f. Music; and

   g. Science and math.

E. Facility Requirements

1. The mobile unit must be parked and appropriately secured prior to children arriving for care.

2. The use of handwashing sinks and toilets not located within the facility must be approved by the Colorado Department of Public Health and Environment.

3. If the mobile preschool is approved by the Colorado Department of Public Health and Environment to use a toilet located outside of the facility, there must be one (1) additional staff member, who is an assistant early childhood teacher or an early childhood teacher, to properly supervise and accompany the children to the toilet facilities.

4. If the Colorado Department of Public Health and Environment approves the use of a public restroom, the restroom must not be shared with the public during the hours the preschool is in operation.

5. There must be a minimum of fifteen (15) square feet per child in the mobile classroom.

6. The mobile preschool must be capable of maintaining a draft-free temperature of a minimum of sixty-eight (68) degrees Fahrenheit.

7. The program must have safely accessible access to an outdoor area for daily planned activities, during inclement weather, an indoor space must be available for gross motor activities.

   a. Programs who qualify for an outdoor space hardship per rule section 2.232(B)(1), must provide daily physical gross motor activities indoors.

F. Safety

1. Space heaters must have screens, a safety overheat protection, a safety trip-over switch, and be inaccessible to children.

2. The mobile preschool must have two (2) means of emergency egress.

2.242 TEEN PARENT PROGRAMS OPERATED BY A PUBLIC SCHOOL DISTRICT

A. Infant programs affiliated with teen parent programs that are operated by accredited public school systems and on school premises may substitute the following age requirements for those at rule section 2.204(B)(3):

1. The minimum age of infants in care is seven (7) days.

2. Infants between the ages of seven (7) and thirteen (13) days may be accepted for care only with written approval from a health care provider and if there are no medical complications for the infant and/or teen mother.

3. Infants fourteen (14) days of age and over may be accepted for care if there are no medical complications for the infant and/or teen mother.

4. The maximum age of infants in care may be extended only in those situations where no teen parent toddler program exists. In this circumstance, an infant may remain in the infant program until the end of the school semester in which the infant becomes eighteen (18) months old.

B. Infant and toddler programs affiliated with teen parent programs that are operated by accredited public school systems on school premises may substitute the following staff requirements for those at rule sections 2.216(B) and (C):

1. The director must be present in the infant program classroom or adjacent teen parent classroom at least sixty percent (60%) of any day the center is open.

2. If the director cannot be present sixty percent (60%) of any day, an individual who meets assistant director qualifications must substitute for the director.

3. Infant staff aides must be at least fifteen (15) years of age and may be parents-to-be, parents of enrolled infants, or students enrolled in a child care related course with the sponsoring school system.

4. Substitutes for infant program staff must be from the sponsoring school system's list of approved substitute staff members. Substitutes who do not meet minimum staff qualifications can work no more than ten (10) consecutive business days per assignment. The dates and times must be recorded and made available for review at all times.

5. Substitutes for infant program staff must hold a current Department-approved first aid and safety certificate that includes cardiopulmonary resuscitation (CPR) for all ages of children.

C. Rest Time Equipment

Bassinets and playpens are allowed for use in a teen parent program when the teen parent(s) remain(s) on site.

2.243 CHILD CARE PROGRAMS AND PRESCHOOLS OPERATED BY A PUBLIC SCHOOL DISTRICT

A. The administration of medical marijuana must comply with policies listed in sections 12-255-120 and 12-255-127, C.R.S.

B. Director Requirements

1. Preschool age classrooms that are operated by public school districts are not required to have a large center director qualified staff member assigned to each program when they have an organizational structure that includes at least ten (10) administrative support elements from the following:

a. Colorado Preschool Program Coordinator;

b. Parent Educational Specialist;

c. Principal;

d. Health Coordinator;

e. Nurse;

f. Health Technician;

g. Food Service Director;

h. A Registered Dietitian or an individual with a Master's level or higher education in Nutrition;

i. Fire/Health/Safety Inspector;

j. Mental Health Team;

k. Speech Language Pathologist;

l. Occupational/Physical Therapist;

m. School Psychologist;

n. Family Outreach Worker;

o. Human Resource Specialist; or

p. Transportation Manager.

2. The program must obtain a director who meets large center director qualifications if substantial evidence has been found leading to an adverse licensing action for any of the following:

a. Lack of supervision;

b. Operating out of the approved staff member to child ratio; or

c. Operating without sufficient qualified staff.

3. Programs who have their director privileges revoked may submit a request for consideration after a period of two (2) years from successful completion of the adverse licensing action.

C. Substitutes

1. Substitutes for directors of part-day public school preschools may be from the sponsoring school system's list of approved substitutes. Substitutes who do not meet director qualifications must consult with a qualified director on administering the center in accordance with early childhood principles and practices and licensing rules.

2. In licensed programs operated by public school districts, substitutes may be from the sponsoring school system's list of approved substitutes. Substitutes who do not meet qualifications for the position that they are substituting for can be used up to ten (10) calendar days per year. The dates and times must be recorded and made available for review at all times.

D. Outdoor Space Requirements

1. Licensed preschool programs operated by public school districts who do not meet fencing or barrier requirements in rule section 2.232(A)(3), may use the school's perimeter fencing if they maintain a ratio of one (1) staff member to eight (8) children.

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2.400 RULES REGULATING CHILDREN'S RESIDENT CAMPS

2.401 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 through 24-4-204 (the "APA"), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101 through 26.5-6-103, (the "Early Childhood Act"), C.R.S., and the Child Care Licensing Act, sections 26.5-5-301 through 26.5-5-329, C.R.S.

The specific rulemaking authorities granted for the Resident camps include sections 26.5-5-303(5) and 26.5-5-314, C.R.S.

2.402 SCOPE AND PURPOSE

The Colorado Department of Early Childhood, Division of Early Learning, Licensing, and Administration is responsible for the administration of health and safety rules and requirements for licensed child care facilities These rules and regulations shall govern the processes and procedures to become a licensed Resident Camp, and the health and safety requirements of Resident Camps in Colorado. In addition to the "General Rules for Child Care Facilities" in rule section 2.100, Children's Resident Camps shall follow the rules specified in this rule section 2.400, and the "Rules Regulating Special Activities" in rule section 2.600.

2.403 APPLICABILITY

The provisions of these rules and regulations shall be applicable to a licensed Resident Camp operating for three (3) or more consecutive twenty-four-hour days during one (1) or more seasons of the year for the care of five (5) or more children.

2.404 DEFINITIONS

A. A “children’s resident camp”” means a facility operating for three or more consecutive twenty-four-hour days during one or more seasons of the year for the care of five or more children. The facility shall have as its purpose a group living experience offering education and recreational activities in an outdoor environment. The recreational experiences may occur at the permanent camp premises or on trips off the premises. A children's resident camp serves children who have completed kindergarten or are six years of age or older through children younger than nineteen years of age; except that a person nineteen years of age or twenty years of age may attend a children's resident camp if, within six months prior to attending the children's resident camp, he or she has attended or has graduated from high school.

B. A children’s resident camp may have a “primitive camp” which is a portion of the permanent camp premises or another site at which the basic needs for camp operation, such as places of abode, water supply systems, and permanent toilet and/or cooking facilities, are not usually provided.

C. A “travel-trip camp” shall be known as a camp in which there is no permanent camp site and children move from one site to another. The travel-trip camp either originates in Colorado or moves into and/or through Colorado from another state and operates for three or more consecutive 24-hour days during one or more seasons of the year for the care of five or more children who are at least ten (10) years old or have completed the fourth grade. The program shall have as its purpose a group learning experience offering educational and recreational activities utilizing an outdoor environment.

D. The “Department” means the Colorado Department of Early Childhood.

2.405 PURPOSE AND GOALS

Each camp must submit to the Department a statement of goals and objectives. This statement must be kept on file, updated periodically, made known to staff, and available for licensing inspection.

2.406 GOVERNING BODY

The governing body as defined in rule section 2.104.P of the General Rules For Child Care Facilities must be identified by its legal name. The names and addresses of individuals who hold primary financial control and officers of the governing body must be disclosed fully to the Department. The governing body is responsible for providing necessary facilities, adequate financing, qualified personnel, services, and program functions for the safety and well-being of children in accordance with these rules. When changes of governing body occur, the new governing body must immediately submit an original application and pay the required fee.

A. If the governing body lets, leases, or rents the licensed facility to any group or organization whose program falls under the definition as found in rule section 2.404, and verifies in writing to the Department that the lessee meets the licensing standards, an application is not required of the lessee. If the governing body does not verify that the lessee meets the licensing standards, an application is required of the lessee and the license must be issued to the lessee before the camp opens.

B. When the facility is let, leased, or rented, the governing body must report the following in writing at the request of the Department: name of the group, number and ages of children, length of time for use of the facility, and the purpose of the camp.

2.407 FINANCIAL SUPPORT

The governing body must satisfy the Department upon request that there is sufficient financial support to operate and maintain a camp in accordance with these rules and camp goals and objectives.

2.408 INSURANCES

Every facility must carry public liability insurance. The applicant or licensee must submit the amount of the insurance and the name and the address of the insurance agency providing the insurance to the camp. The camp must maintain information about the insurance at the campsite.

2.409 WRITTEN AGREEMENTS, REPORTS, AND LOGS

A. There must be on file at the campsite an annually-dated written or electronic agreement with a licensed physician or nearby health care facility to provide the necessary medical services for campers at the camp and medical help as a backup to the camp staff members responsible for health supervision.

B. A travel-trip camp is not required to have a written agreement, but it must have a list of all medical facilities in areas where the travel-trip camp will be traveling.

C. The camp must maintain at the campsite a medical record keeping system, listing name of camper, illness or injury, prescribed treatment and date the treatment was administered, and name of person administering care. This record keeping system must be available to licensing personnel.

D. The camp must submit as soon as possible but not longer than twenty-four (24) hours to the Department a written report about any camper who has been separated from the group outside of the supervision of their assigned staff member or for whom a report has been made to the local Sheriff's department for search and rescue. Such report must indicate the name, age, and address of the camper; the name of parents/guardians and their address, if different; the date when the child was lost; the location, time, and circumstances when the camper was last seen; and circumstances of locating the camper.

PERSONNEL

2.410 GENERAL REQUIREMENTS FOR ALL PERSONNEL

A. All paid employees at the camp less than sixteen (16) years of age must be employed in compliance with Colorado labor laws.

B. All counselors and staff members having a supervisory role with campers must be at least eighteen (18) years of age, or seventeen (17) years of age and graduated high school or completion of GED, and have interest in, respect for, and ability to work with children.

C. There must be a letter of agreement with each volunteer or employed staff member which includes listing of specific responsibilities/job description and referring to information contained in the hiring packet or staff manual. Days or hours of employment/time off, personal conduct, and health history questionnaire must be provided in writing or electronically and may be provided in the hiring packet or the staff manual. The letter of agreement must be signed by both the employer and the volunteer or staff member. In the case of staff members or volunteers who are younger than eighteen (18) years old, the letter of agreement must also be signed by the parents/guardians.

D. There must be at least three (3) references for each staff member of the camp attesting to the individual's character and suitability to work with children. The written references must be in the personnel file or there must be an indication in the personnel file that a reference has been obtained.

E. Each staff member must complete an annual health history. The health history must be maintained in a secured location at the camp.

F. Each staff member must be trained and given written instructions as to camp policy when emergencies occur including, but not limited to, lost campers, medical situations, hazardous wildlife and environmental hazards. In the case of travel trip or primitive camps, these plans must accompany the staff and campers.

2.411 CAMP PERSONNEL

A. Each camp must have an onsite director who must be at least twenty-one (21) years of age. The director must have twelve (12) months (1820 hours) verified leadership experience in an administrative or supervisory position, with groups of children five (5) years of age or older, since he or she attained the age of eighteen (18) years.

B. At each permanent camp there must be one health care worker who is responsible for monitoring the overall health of the campers and staff. A health care worker must be one of the following: a licensed physician, a registered nurse, a licensed practical nurse, a licensed physician's assistant, a certified nursing aide or an individual who holds current certification in emergency medical services. All health care workers must work within their scope of practice, including the ability to work independently or with required oversight.

1. At least one health care worker must be at the camp twenty-four (24) hours per day that the camp is in session.

2. If the camp health care worker is not a physician or registered nurse, a physician or registered nurse actively licensed by the Colorado Medical Board or Colorado State Board of Nursing must specifically delegate the camp staff member the authority to administer medications. The delegating physician or registered nurse must be aware of the specific medical needs of campers, be available for consultation while the camp is in session, and accept responsibility for monitoring the therapeutic effects of medications administered at camp. Respiratory Therapists may administer medication within their scope of practice.

3. In order to administer medications, all health care workers, except physicians and registered nurses, must complete the Department-approved Medication Administration Training, receive delegation and hold current Department-approved First Aid and Cardiopulmonary Resuscitation (CPR) Certification.

C. At any camps less than thirty (30) minutes from emergency medical services by vehicle, in clear weather, there must be at least one (1) staff member with each group of children qualified with Department-approved First Aid, CPR, and Medication Administration Training and delegation.

D. All staff members must complete a Department-approved Standard Precautions training prior to working with children. This training must be renewed annually and may count towards ongoing training requirements.

E. For every thirty (30) or fewer children in attendance, there must be at least one (1) staff member with each group of children who holds current Department-approved First Aid and CPR certification for all ages of children. At any camp more than thirty (30) minutes away from emergency medical services, there must be at least one (1) staff member with each group of children qualified with a minimum of Wilderness First Aid Training, Department-approved CPR and Medication Administration Training. Staff members with

Medication Administration Training must have annual delegation as required in rule section 2.411(B)(3).

F. There must be sufficient camp counselors or staff members who have a supervisory role with children at the camp to meet the staff ratio as indicated in rule section 2.412. Children under the age of six (6) years who live at camp or are visiting must be directly supervised by a caregiver, who is not included in the staff to camper ratio, at all times when the children are involved in camp activities. Staff members whose children are under six (6) years of age cannot be supervising campers or leading special activities when they are supervising their own children.

G. If the camp has counselors-in-training who are not fully qualified, they must be directly accountable to a qualified counselor or specialized staff member and must be directly supervised by those individuals in their role when caring for children. The counselors-in-training who are less than eighteen (18) years old must not be counted as staff members in the maintenance of the staff ratio for supervision of children as found in rule section 2.412.

H. There must be specialized staff members who are responsible for specific portions of the camp program. Requirements for those specialized staff members are found among the requirements for the specialized activity areas in the “Rules Regulating Special Activities,” in rule sections 2.600.

CHILD CARE

2.412 SUPERVISION

A. The camp must have an accurate system whereby staff members who are responsible for the supervision of children must know where each child is at all times.

B. At no time may a camper be left without qualified supervision. Sleeping quarters of the counselors must be within sight or hearing distance of the sleeping quarters of the children whom they supervise. Children may sleep alone for specific program functions, such as solos or survival experiences, and then only when regularly monitored pursuant to the camp's written program. The camp’s written program must include an audible mechanism for a camper to alert a staff member who is able to immediately respond.

C. Each special activity must be supervised by a staff member currently qualified in Department-approved First Aid and CPR training, and by the experience and training in that special activity as specified in the “Rules Regulating Special Activities,” in rule sections 2.600.

D. In a children’s resident camp, ratio of one (1) staff member having a supervisory role with children per number of campers must be maintained at all times as follows:

Age of Children	**Number of Children**	**Number of Staff Members**
5 through 7 yrs. Old	6	1
8 through 10 yrs. Old	8	1
11 through 13 yrs. Old	10	1
14 yrs. And older	12	1

E. In a trip away from the children’s resident camp premises or at the primitive camp, the staff ratio given in rule section 2.412(D), must be maintained, but there must be at least two (2) staff members accompanying each trip, and one (1) staff member must meet the qualifications as defined in rule section 2.411(C). If the trip exceeds two (2) nights, there must be with the group a

staff member who is at least twenty-one (21) years of age, exercises good judgment, the ability to assume leadership independently and has been trained in trip leading procedures.

F. In a travel-trip camp, the staff ratio provided in rule section 2.412(D) must be maintained, but there must be at least two (2) staff members at all times with the campers. One (1) of those staff members must be at least twenty-one (21) years old and one (1) staff member must meet qualifications of the health care worker as defined in rule section 2.411(B).

G. In the case of trips away from the permanent children's resident camp, including overnights or travel-trip camps, there must be a day-to-day itinerary prepared prior to departure. The resident camp headquarters must keep a copy of the itinerary. The itinerary must be followed as closely as possible. Camp headquarters must be notified of an itinerary change as soon as possible.

2.413 HEALTH CARE

A. The camp health program must be under the supervision of an individual qualified as stated in rule section 2.411(B).

B. At least ten (10) calendar days prior to admission, each camper must furnish a health history which indicates communicable diseases and chronic illnesses or injuries the individual has had, any known drug reactions and allergies, medications being taken, and any necessary health procedures or special diets.

C. The camp must inform its health care worker prior to the first day of care of the enrollment of a child with special health care needs, if known, to ensure staff receives training, delegation and supervision as indicated by the child's individualized health care plan.

D. The camper must present a statement confirming a physical examination, which has been performed within the preceding twenty-four (24) months from the first day of attendance at camp by a health care provider, which includes any physical problems which would limit the camper's activity, and any special care which the child will need.

E. The camper must submit documentation of immunization status or exemption as required by Colorado Department of Public Health and Environment (CDPHE). Up-to-date school-required immunizations must be documented as specified on the Colorado Department of Public Health and Environment certificate of immunization or on an "approved alternate" Certificate of Immunization, defined in Colorado Department of Public Health and Environment regulation at 6 CCR 1009-2:VI(A), (May 15, 2023), no later editions or amendments are incorporated. These regulations are available from the Colorado Department of Public Health and Environment at no cost at https://www.coloradosos.gov/CCR/Welcome.do. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours. Colorado law requires proof of immunization or exemption be provided prior to or on the first day of admission.

F. Upon arrival or within twenty-four (24) hours each camper must be observed, by camp staff trained to do so, to identify noticeable evidence of any illness, communicable disease, or signs of abuse. The camp health care worker must meet with campers that have special medications, health procedures, special diet restrictions, known allergic reactions, chronic health conditions or any known physical limitations.

G. The camp must provide evidence that the exclusion of a child that shows signs of illness or communicable disease is in compliance with the exclusion guidelines of the Colorado Department of Public Health and Environment (CDPHE), published by CDPHE at https://drive.google.com/file/d/1RcdCmU4SYXwmVhJrA3Pyk0gP0MTDClkF/view, herein incorporated by reference. No later editions or amendments are incorporated. These

recommendations are available from the Colorado Department of Public Health and Environment at no cost at https://cdphe.colorado.gov/communicable-diseases/infectious-disease-guidelines-schools-childcare. These recommendations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours. If a child needs to be excluded the camp must consult a doctor or medical facility as to the child's treatment.

H. If a camper requires medical attention away from the camp site, the camper's parents/guardians must be notified and necessary medical care must be sought from a health care provider or medical facility. Written authorization for medical care must be in the child's file pursuant to rule section 2.418.

I. In the case of travel-trip camps, primitive camps, or trips away from the camp, a copy of the statement which has been signed by the parent or guardian indicating that the camp staff may obtain emergency medical care must be in the possession of staff members accompanying the campers. The original signed statement must be readily accessible.

J. The camp health care worker must be responsible for administering medication to campers. If the health care worker is not a Colorado licensed registered nurse or physician, the health care worker may only administer medication prescribed for individual campers as delegated and supervised by a registered nurse or physician. Respiratory therapists may administer medication within their scope of practice.

1. Medication prescribed for campers must be from a licensed pharmacy; labeled with the name, address, and phone number of the pharmacy; name of the camper; name and strength of the medicine; directions for use; date filled; prescription number; and the name of the practitioner prescribing the medicine. When no longer needed or expired, the medication must be returned to the parent or disposed of properly.

A. When the camp has an on-site registered nurse or physician, and campers are on excursions away from the camp, the registered nurse or physician is responsible for determining a safe process for the administration of routine and emergency medications. This process should include:

i. The transfer of medications and associated documents from their usual storage place to portable storage for the trip.

ii. Labeling which includes camper's name, medication, route, dosage, and time the medication should be administered as indicated on the original medication container.

iii. Secure and temperature appropriate storage during the trip.

iv. Hand hygiene during the trip.

v. Appropriate documentation practices during the trip.

vi. The return of medication and associated documents from portable storage for the field trip to their usual on-site storage.

b. If the camp does not have an on-site registered nurse or physician, medications on trips must be in original labeled pharmacy containers

2. A record of any medications administered must be maintained in a medication administration record pursuant to rule section 2.409(C).

3. All medication at the permanent camp site must be kept in a clean, locked container, except emergency medication such as epinephrine auto injectors or asthma inhalers. On excursions away from the camp, medication must be under the control of an adult and must be stored inaccessible to children.

4. The camp may, with written parental consent and authorization of the prescribing practitioner, permit children who have asthma to carry their own inhalers and use them as directed. All staff must be aware of which children have asthma and which ones may use their own inhalers as needed.

5. Topical preparations such as petroleum jelly and bug sprays may be administered to children with written parental authorization. These preparations may not be applied to open wounds or broken skin unless there is a written order by the prescribing practitioner.

6. Home remedies, including homeopathic medications, must not be administered at camp without written parental consent, authorization of the prescribing practitioner and delegation as required in rule section 2.411(B).

K. Standing orders for over the counter medications must be updated annually and are only allowed with parental permission and when administered by a physician or registered nurse.

L. First Aid supplies must be located near food service operations, program areas, maintenance areas, the headquarters of the medical supervisor, and in motor vehicles which are used to transport campers.

M. There must be an identified headquarters of the health care worker at the campsite.

N. Transportation must be available at all times in cases of medical emergency according to the written emergency medical evacuation plan of the camp.

O. To ensure the protection of campers from sun exposure the camp must:

1. Obtain the parent or guardian's written authorization and instructions for applying sunscreen or use of another form of parent or guardian approved sun protection to their children's exposed skin prior to going outside. A doctor's permission is not needed to use sunscreen at the camp;

2. Apply sunscreen, have campers apply sunscreen, or use another form of parent or guardian approved sun protection for campers prior to campers going outside. Sunscreen must be reapplied as directed by the product label;

3. When supplied for an individual camper, the sunscreen must be labeled with the camper's first and last name; and

4. If sunscreen is provided by the camp, parents must be notified in advance, in writing, of the type of sunscreen the camp will use.

2.414 GUIDANCE

A. Guidance must be appropriate and constructive or educational in nature and may include such measures as diversion, separation of the child from the situation, talking with the child about the situation, or praise for appropriate behavior.

B. Children must not be subjected to physical harm, fear, or humiliation.

C. The program director must not use, or permit a staff member to use corporal punishment as defined in section 22-1-140, C.R.S.

D. Guidance must not be associated with food, rest, or toileting. Children should never be punished for toileting accidents. Children must not be denied food or forced to eat as a disciplinary measure.

E. Separation, when used as guidance, must not exceed five (5) minutes and must be appropriate for the child's age. The child must be in a safe, lighted, well-ventilated area and be within sight and hearing of an adult. The child must not be isolated in a locked or closed area.

F. Verbal abuse or derogatory remarks about the child are not permitted.

G. Authority for guidance must not be delegated to other children, and the camp must not sanction one child punishing another child.

2.415 SECURITY PRACTICES

A. The camp must establish a written security procedure and must train staff members and campers regarding this procedure.

B. The camp must report to the local law enforcement office or department the dates of the camp sessions and the location of the camp.

C. When a camper is discharged from camp or when the camp session is over, the child must be returned to the parents/guardians or an adult authorized by the parents/guardians. If the individual is unknown to the staff, identification must be required.

2.416 FOOD AND NUTRITION

A. Each camp must establish a written policy for its nutrition and food service program. This policy must include meal hours, type of food service, staff responsibilities during the time food is served, authorization of special diets, and the administration of the food service program. This policy must be available to all staff members.

B. Foods provided by the camp must be of sufficient quantity and nutritional quality to provide for the dietary needs of each child. Menus must meet the current United States Department of Agriculture (USDA), Child and Adult Care Food Program (CACFP) meal pattern guidance and requirements published by the USDA Food Nutrition Service at https://www.cacfp.org/meal-pattern-guidance/ (April 2016) and 7 C.F.R. sections 210.10 and 226.20 (July 1, 2022), herein incorporated by reference. No later editions or amendments are incorporated These regulations are available at no cost from the USDA Food Nutrition Service at https://www.ecfr.gov. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours. , . The only exception must be by written parental or medical direction.

C. Menus must be planned at least one (1) week in advance and must be dated as to the week in use. The current week's menu must be posted in the food preparation area. Food substitutions must be noted on the menus in writing. After use, the menus must be kept on file for the period of the camping season.

D. In travel-trip camps, all menus must be planned prior to leaving and changes noted in writing. Menus must be maintained in file of camp.

2.417 TRANSPORTATION

A. Transportation provided by the camp must meet the following requirements:

1. The camp is responsible for any children it transports;

2. The camp must obtain written permission from parents or guardians for any transportation of their child during camp hours;

3. The number of staff members who accompany children when being transported in the vehicle must meet the child care staff ratio found in rule section 2.412(D). The driver of the vehicle is considered a staff member;

4. The camp must not permit children under the age of eight (8) or children under 57" tall to ride in the front seat of a passenger vehicle. Children under eight (8) must be secured in a child restraint system that is appropriate for the age and development of that child. The child restraint must be safe and free of hazard;

5. Campers must be loaded and unloaded out of the path of moving vehicles;

6. Campers must not be left unattended in the vehicle;

7. For trips away from the camp, a list of individuals on each trip must be readily available either in the vehicle(s) or at the camp office.

B. Requirements for vehicles

1. Any vehicle used for the transportation of children to and from the camp or during camp activities must meet the following requirements:

a. The vehicle must be enclosed and have door locks;

b. The seats of the vehicle must be constructed and installed according to the vehicle manufacturer's specifications;

c. The vehicle must be kept in satisfactory condition to assure the safety of occupants. Vehicle tires, brakes, and lights must be operational, safe and free of hazard;

d. Seating must be comfortable with a seat of at least ten (10) inches wide for each child;

e. Vehicles must be loaded only within the passenger seating limit established by the vehicle manufacturer; and

f. Each vehicle must have a first aid kit.

2. In passenger vehicles, with a manufacturer's established capacity of sixteen (16) or fewer passengers and less than 10,000 pounds, the following is required:

a. Each camper and staff member must be restrained in an individual seat belt; and

b. Campers and staff must be instructed and required to keep the seat belt properly fastened and adjusted.

3. In vehicles with a manufacturer's established capacity of sixteen (16) or more passengers, seat belts for passengers are not required.

C. Requirements for drivers of vehicles

1. All drivers of vehicles transporting children must operate the vehicle is a safe and appropriate manner.

2. The camp must verify that all drivers meet minimum requirements, including:

a. Driving records that have been reviewed within the last four months for seasonally hired drivers or within the last twelve months for year-round drivers to determine driver suitability;

b. Drivers have the appropriate license for the vehicles to be driven;

c. Drivers must have current Department-approved first aid and CPR certification;

d. All drivers must be at least twenty (20) years of age;

e. Drivers must complete a minimum of four (4) hours of driver training that includes at a minimum: behind the wheel training; participant transport attendance procedures including taking attendance at the destination; managing behavioral issues; loading and unloading procedures; daily vehicle inspection procedure; proper tire inflation; emergency equipment and how to use it; accident procedures; passenger illness procedures; procedures for backing up; and, if buses are used, evacuation procedures;

3. The driver must ensure that all doors are secured at all times when the vehicle is moving;

4. The driver must make a good faith effort to ensure that each child is properly belted throughout the trip; and

5. The driver must not eat or use a cellular or other mobile device while driving.

RECORDS FOR CHILDREN AND PERSONNEL

2.418 CHILDREN'S RECORDS

A. Prior to the child’s attendance at camp, the following information must be obtained and maintained at the campsite for each camper:

1. Child's name, birth date, and address.

2. Parent’s or guardian's names, home and employment addresses, telephone numbers, and email addresses.

3. Name, address and telephone number of emergency contacts.

4. Name, address, and telephone number of individuals authorized to take the child from camp if different from the parent or guardian.

5. Dates of the camp session which the child will attend.

6. Name and telephone number of the child's health care provider.

7. Authorization signed by the parents/guardians, giving authority for the camp to obtain emergency medical care.

8. Authorization signed by the parents/guardians of the child to participate in all special trips or excursions away from the campsite.

9. Indication of any camp activity in which the parents/guardians of the child does not wish the child to participate (see the Rules Regulating Special Activities, in rule sections 2.600).

10. Physical examination, health history and immunization as required in rule section 2.413.

2.419 STAFF RECORDS

There must be maintained at the campsite a record for each staff member, paid or volunteer, which must include the following:

A. Name, address, and birth date of the individual.

B. Training, education, and experience of the staff member.

C. Copies of any required certification or other training confirming qualifications for the responsibilities assigned at the camp.

D. Copy of a health history as required in rule section 2.410(E).

E. Name, address, and telephone number of any person(s) to be notified in the event of an emergency.

F. Copy of the written references or note of phone references pursuant to rule section 2.410(D).

G. Copy of the signed letter of agreement pursuant to rule section 2.410(C).

H. The dates of employment for each staff member.

2.420 GENERAL INFORMATION

A. The camper's file must be retained by the camp for at least three (3) years after the child's last day of attendance at the camp, and must be available without restriction to Department.

B. Personnel and children's records must be maintained by the camp for at least three (3) years. If the record reflects an accident, injury, or other unusual circumstance, it is suggested that the record be maintained for a longer period of time.

CAMPSITE, PHYSICAL FACILITY, FIRE SAFETY AND SANITATION

2.421 CAMPSITES

A. Travel-trip camps must submit plans for approval by the Colorado Department of Public Health and Environment, thirty (30) days prior to the date the trip camp begins. The travel-trip camp must maintain written evidence of Colorado Department of Public Health and Environment approval.

B. The camp must conform to fire prevention and protection requirements of local fire departments in the locality of the camp. In the case of a travel-trip camp, the fire department approval is not required.

C. The camp must identify hazards and high-risk areas and develop policies they follow to prevent unauthorized access to these hazards and high-risk areas.

D. Each camp must have a telephone or means of communication to contact emergency services.

E. Emergency telephone numbers must be posted the camp health care professional, nearest clinic or hospital, ambulance service, local sheriff's office, national or state forest service office (as appropriate), fire department or lookout station, and poison control center.

F. In the case of a primitive camp or travel-trip camp, sources of emergency care and methods of communication with such facilities as hospitals, police, and forest service must be identified for each campsite on the itinerary.

G. When playground equipment is provided at a children's resident camp, the equipment and playground area must be free of obstruction and man-made or natural hazards and must be away from natural pathways of traffic.

H. Playground equipment must meet the following requirements:

1. Be in good repair, of solid and safe construction, free of rough edges, protruding bolts, and the possibility of entrapment of extremities.

2. Be securely anchored by suitable footing.

3. Swings must have seats made of a flexible material.

4. Moving equipment must be located toward the edge or corner of a play area or be designed in such a way as to discourage children from running into the path of the moving equipment.

5. Metal equipment must be placed in the shade or a shade structure must be provided.

6. The maximum height of any piece of playground equipment is six (6) feet.

7. All pieces of playground equipment must be designed to guard against entrapment and strangulation.

8. All pieces of permanently installed playground equipment must be surrounded by a resilient surface of a depth of at least six (6) inches. Rubber mats manufactured for such use if safe and free from hazard may be used in place of resilient material.

9. Department-approved resilient surfacing includes loose fill materials such as wood chips, wood mulch, engineered wood fiber, pea gravel, synthetic pea gravel, shredded rubber tires, and fine loose sand. Solid unitary materials include poured in place surfacing, approved rubber mats, playground tiles, and astro turf with built in resilient pad.

10. Any permanently installed outdoor climbing equipment or portable climbing equipment eighteen (18) inches or higher must have Department-approved resilient surfacing underneath and in the use zone surrounding the equipment, and installed according to manufacturer instructions.

11. Playground surfaces must be checked prior to use for the presence of dangerous or other foreign materials. Playground equipment must be checked for safety on a monthly basis and written documentation of the safety check must be maintained.

I. If the children's resident camp is located on or uses national or state lands, the director must familiarize the staff and campers with rules and ethics governing the use of such property and must be responsible for compliance.

J. An itinerary must be filed or an arrangement must be made with national or state forest service office if such land is to be used by the travel-trip camp. The director must familiarize the staff and campers with rules governing the use of such property. Should the travel-trip camp pass onto private land, an agreement must be made with the individual responsible for that land prior to access.

K. In indoor structures where the program uses any source of coal, wood, charcoal, oil, kerosene, propane, natural gas or any other product that can produce carbon monoxide indoors, an operational carbon monoxide detector must be installed according to the manufacturer's instructions. Carbon monoxide detectors must be tested at least annually with documentation available upon request. Carbon monoxide detectors that are only battery-powered must meet the following requirements:

1. Tested monthly to ensure they are operational; and

2. Batteries changed at least yearly.

2.422 PERMANENT AND SEMI-PERMANENT SHELTERS AND SLEEPING FACILITIES

A. All structures used by children must be kept in good repair at all times.

B. At least one-half of the floor area in each living unit, excluding tents, must have a minimum ceiling height of seven (7) feet. No portion of a room having a ceiling height of less than five (5) feet will be considered as usable floor space.

C. If fabric structures are used they must be constructed of a fire- and flame-retardant material.

D. Each camper must be provided with his or her own mat, pad, bed, or cot.

E. The aisles between rows of cots, beds, or bunks must be kept clear for exiting purposes. There must be at least two (2) feet of clear space separating sides of cots, beds or bunks.

F. If bunk beds are in use, no bunks may contain more than two (2) tiers of beds. There must be at least twenty-seven (27) inches of clear space separating the tiers of beds and thirty-six (36) inches of clear space between the top tier and the ceiling. Electric lights which are within reach of the top bunk must be protected.

G. Each permanent sleeping unit, building, or tent must have at least thirty (30) square feet of floor space per person, camper, or counselor for single-tier beds and twenty (20) square feet per person, camper, or counselor for two-tier bunks.

H. In tent structures which have a platform floor, beds or bunks must be arranged in such a fashion that no camper who might fall from a bed or bunk could fall through the sides of the tent to the ground below.

I. No camper shall sleep in the same room or tent with any person of the opposite gender, except for members of his or her immediate family.

J. In a primitive camp or travel-trip camp, adequate shelters such as a tent must be available for each child. The shelter occupancy must be in compliance with manufacturers' recommendations.

2.423 TOILET AND BATHING FACILITIES

A. In a resident camp there must be one (1) approved toilet for every twenty (20) or fewer campers for which the camp is licensed. Urinals may be substituted for no more than one-third of the required toilets.

B. Children must be allowed the use of gender-segregated toilet facilities that are consistent with their gender identity or have individual toilet facilities.

C. Hand washing facilities must be provided throughout the camp. There must be one (1) basin or lavatory for per every twenty (20) campers. In new construction completed after April 1, 2018, change of governing body or extensive remodeling the camp must provide hand washing facilities located adjacent to where the camp serves meals.

D. Showers or bathtubs must be located within buildings used for sleeping, such as cabins or dormitories, or in a centrally located shower or bathing structure.

1. There must be one (1) shower head or bathtub per every twenty (20) campers for which the camp is licensed.

2. Hand washing facilities must be available in the shower or bathing area.

E. Camps must provide evidence that all sewage disposal systems must meet Colorado Department of Public Health and Environment (CDPHE) requirements defined in Colorado Department of Public Health and Environment Regulation at 5 CCR 1002-43, (April 30, 2018), herein incorporated by reference. No later editions or amendments are incorporated. These recommendations are available at no cost from the CDPHE at https://www.coloradosos.gov/CCR/Welcome.do. These recommendations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours.

2.424 GENERAL BUILDING SAFETY

A. Every building, structure, tent, cabin, and camp premises must be kept in good repair, and must be maintained in a safe condition.

B. All construction and electrical installations must be safe and free from hazard.

C. In permanent structures, exit signs must be posted at every required exit doorway and wherever otherwise required to clearly indicate the directions of egress.

D. A building with occupancy of more than twelve (12) persons must be provided with at least two (2) independent means of egress separated by no less than fifty (50) percent of the largest dimension of the building from each other.

1. In an existing building, such as a cabin occupied by more than twelve (12) but less than twenty (20) persons, a window may be utilized as an acceptable second exit. The window must be openable and the distance from the window to the ground must not be more than four feet.

2. Each exit door must be hung to swing in the direction of exit travel. Exiting through a food preparation area is not permitted.

E. If buildings with second stories are used by campers, there must be two independent means of egress separated by no less than fifty (50) percent of the building from each other per floor.

F. The camp must provide evidence each fire escape from any upper level of a building is installed in accordance with local fire protection ordinances.

G. In every building or structure, exits must be arranged and maintained so as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. No lock or fastening to prevent free escape from the inside of any building can be installed. Only panic hardware or single-action hardware is permitted on a door or on a pair of doors. All door hardware must be within the reach of children.

H. Exit doors must be equipped only with panic or single-action hardware.

I. There must be fifteen (15) square feet per occupant in any room having an occupant load of more than fifty (50) persons where fixed seats are not installed and which is used for classroom, assembly, or similar purposes. The maximum occupancy must be posted in a conspicuous place near the main exit from the room.

J. Furnaces, fireplaces, heaters, or wood-burning stoves must meet the following regulations:

1. All heating units must be and maintained with safety devices to prevent fire, explosions, and other hazards. No open-flame gas or oil stoves, unscreened fireplaces, hot plates, or unvented heaters can be used for heating purposes. All heating elements, including hot water pipes, must be insulated or installed in such a way that children cannot come in contact with them.

2. A heater or wood-burning stove must be located and/or protected in such a manner as to prevent injuries to occupants of the building.

3. Wood-burning stoves must be regularly cleaned of ashes, which are immediately removed from the building and properly stored.

4. Space around furnaces, heaters, and wood-burning stoves must not be used for storage.

K. All firearms must be locked and inaccessible to children. This includes, but is not limited to air rifles, bb guns, and paintball guns. Ammunition must be locked and stored separately.

L. Power tools, explosives and special equipment involving unusual risk must be stored in a locked place inaccessible to children, and must always be under the custody and direct supervision of authorized personnel when in use.

M. Volatile substances such as gasoline, kerosene, fuel oil, and oil- based paints, firearms, explosives, and other hazardous items must not be stored in any area of the building used for children unless approved by the local fire department.

N. Substances which may be toxic to a child if ingested, inhaled, or handled, including, but not limited to, poisons, drugs, medicines, insecticides, herbicides, rodenticides, bleaches, chemicals, and corrosive agents must be stored in a cabinet or enclosure located in an area not used by children, stored in the original container, and properly labeled.

O. Glass doors, walls, or panels must be clearly marked. Safety glass must be installed when required.

P. Stairways of a height of more than thirty (30) inches must be equipped with handrails on each side of the stairways. A stairway which is larger than eighty-eight (88) inches wide must have an intermediate handrail equal distance between the two handrails.

Q. All window wells and outside stairwells that are hazardous to children must be equipped with screens or guards, which must be attached in such a manner that they may either by removed from the inside or broken in from the outside in case of fire.

R. All areas accessible to children must be maintained in a safe condition by removal of debris, dilapidated structures, and broken or worn equipment or dangerous items.

2.425 FIRE SAFETY PROVISIONS

A. Any fire extinguisher used at the camp must be of a dry chemical type, hung at a level readily available to staff members, and annually inspected by an approved inspector. Indian pump backpack fire extinguishers and fire extinguishers approved for use by the U.S. Forest Services are also acceptable.

1. There must be a fire extinguisher located in the camp kitchen.

2. In each building and/or structure, there must be a fire extinguisher on each floor.

3. In tent areas, there must be a fire extinguisher located within seventy-five (75) feet of each tent or a plan approved by the Department.

B. In each camp there must be a fire alarm(s) must sounds a separate and distinctly recognizable tone from all other signaling devices used by the camp. The alarm(s) must be audible throughout the occupied camp premises. The alarm device, once activated, must continue to sound automatically.

C. Within twenty-four (24) hours after arrival at the campsite, all individuals attending the camp must be made familiar with the methods by which the fire alarm may be activated and with procedures to be followed upon notification of fire.

D. Each separate building used for sleeping campers and each multistory building must be protected by a smoke detector on each floor of the building.

E. Areas used for campfires must be cleared and must be away from overhanging branches.

F. Campfires must never be left unattended and must be thoroughly extinguished. Extinguishing equipment must immediately accessible.

G. Campfires and open flames of any type must be prohibited within ten (10) feet of any tent or fabric structure.

2.500 RULES REGULATING SCHOOL-AGE CHILD CARE CENTERS

2.501 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 through 24-4-204 (the “APA”), C.R.S.; the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101 through 26.5-6-103. (the “Early Childhood Act”), C.R.S.; the Child Care Licensing Act, sections 26.5-5-301 through 26.5-5-329, C.R.S.;; and the Child Care Development and Block Grant Act of 2014, 42 U.S.C. sec. 9858e.

The specific rulemaking authorities granted for the School Age Programs include sections 26.5-5-303(3) and 26.5-5-314, C.R.S.

2.502 SCOPE AND PURPOSE

The Colorado Department of Early Childhood, Division of Early Learning, Licensing, and Administration is responsible for the administration of health and safety rules and requirements for licensed child care facilities. These rules and regulations shall govern the health and safety requirements of licensed school-age programs in Colorado. All School-Age Child Care Centers must comply with the "General Rules for Child Care Facilities" in rule section 2.100, "Rules Regulating School-Age Child Care Centers" in rule section 2.500, and the "Rules Regulating Special Activities" in rule section 2.600.

2.503 APPLICABILITY

The provisions of these rules and regulations shall be applicable to Licensed School-Age Programs caring for five (5) or more children with or without compensation for such care and with or without stated educational purposes.

2.504 DEFINITIONS

A. A "school-age child care center" (hereafter referred to as the "center") is a child care center that provides care for whole or part of the day for the care of five (5) or more children who are between five (5) and eighteen (18) years of age. Children four (4) years of age, who will turn five (5) on or before October 15th of the current calendar year may attend the center as part of a "building-based school-age child care program" or "building-based day camp" summer program prior to their kindergarten year. The center must operate for more than one week during the year. The term includes facilities commonly known as "day camps," "summer camps," "summer playground programs," "before and after school programs," and "extended day programs." This includes centers operating with or without compensation for such care, and with or without stated educational purposes.

B. A "building-based school-age child care program" is a child care program that provides care for five (5) or more children who are between five (5) and eighteen (18) years of age. The center is located in a building that is regularly used for the care of children.

C. A "day camp" is a school-age child care program which operates at least four (4) hours a day primarily during one season of the year, and during school vacation periods for children between five (5) and eighteen (18) years of age, which accepts registrations for finite, not necessarily contiguous sessions. Programs may operate daily between 6:00 a.m. and 10:00 p.m. Day camp programs may offer no more than two (2) overnight stays each camp session.

The types of day camps are as follows:

1. A "building based day camp" is a child care program that provides care for five (5) or more children who are between five (5) and eighteen (18) years of age. The day camp is located in a building which, along with the outdoor surroundings, is regularly used by the program.

2. A "mobile day camp" is a child care program that provides programming for five (5) or more children who are at least seven (7) years of age or who have completed the first grade. Children move from one site to another by means of transportation provided by the governing body of the program. The program uses no permanent building on a regular basis. Mobile day camp programs may operate in multiple sites, in a single county, under one license.

3. An "outdoor-based day camp" is a child care program that provides care for five (5) or more children who are at least seven (7) years of age or have completed the first grade.

The day camp does not use a permanent building on a regular basis and provides programming in a permanent outdoor or park setting.

POLICIES AND PROCEDURES

2.505 STATEMENT OF POLICIES AND PROCEDURES

A. At the time of enrollment, and upon amendments to policies and procedures, the center must give the parent(s)/guardian(s) the center's policies and procedures, and provide the opportunity to ask questions. Written copies must be available either electronically or in hard copy. The center must obtain a signed document stating that the parent(s)/guardian(s) have received the policies and procedures, and by signing the policies and procedures document, the parent(s)/guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and procedures. Policies must address or include the each of the following:

1. The center's purpose and its philosophy on child care.

2. The ages of children accepted.

3. Services offered for special needs children in compliance with the Americans with Disabilities Act (see rule section 2.119 of the General Rules for Child Care Facilities).

4. The hours and dates when the center is in operation, specific hours during which special activities are offered, and holidays when the center is closed.

5. The policy regarding inclement weather.

6. The procedure concerning admission and enrollment of children.

7. An itemized fee schedule.

8. The procedure to ensure the location of children is known at all times, how children are accounted for throughout the day, and that children are supervised at all times by their assigned staff member.

9. The procedure on guidance, positive instruction, supporting positive behavior, discipline and consequences, including how the center will:

   a. Cultivate positive child, staff and family relationships;

   b. Create and maintain a socially and emotionally respectful early learning and care environment;

   c. Implement teaching strategies supporting positive behavior, pro-social peer interaction, and overall social and emotional competence in young children;

   d. Provide individualized social and emotional intervention supports for children who need them, including methods for understanding child behavior; and developing, adopting and implementing a team-based positive behavior support plan with the intent to reduce challenging behavior and prevent suspensions and expulsions; and

   e. Access an early childhood mental health consultant, as defined in section 26.5-3-701, C.R.S., or other specialist as needed.

10. The procedure for handling children's illnesses, accidents, and injuries, including when children will be excluded from care and notification of parents/guardians.

11. The procedures followed when a child is separated from their group and is not under the direct supervision of their assigned staff member.

12. The procedure for transporting children, if applicable, including transportation arrangements and parental permission for excursions and related activities.

13. The written policy and procedure governing field trips, television and video viewing, and special activities, including the staff's role for the supervision of children.

14. The procedure on children's safety related to riding in a vehicle, seating, supervision, and emergency procedures on the road.

15. The procedure for releasing children from the center only to persons for whom the center has written authorization.

16. The procedures followed when a child is picked up from the center after the closing hours of the center or not picked up at all, and the procedure to ensure that all children are picked up before the staff leave for the day.

17. The procedure for caring for children who arrive late to the center and their class/group is away from the center on a field trip or excursion.

18. The procedure for storing and administering children's medicines and delegation of medication administration in compliance with section 12-255-131, C.R.S., of the "Nurse and Nurse Aide Practice Act."

19. The procedure concerning children's personal belongings and money.

20. The policy concerning meals and snacks

21. The policy and procedure regarding visitors.

22. The procedure for filing a complaint about child care including the name, address and telephone number of the Colorado Department of Early Childhood (see rule section 2.125 of the General Rules for Child Care Facilities).

23. The procedure for reporting child abuse and/or neglect, including the name of the county department of social/ human services and phone number of where a child abuse report should be made (see section 2.126 of the General Rules for Child Care Facilities).

24. The policy for notification when child care service is withdrawn by the program, or when parents or guardians withdraw their child(ren) from the center.

25. The procedure, if applicable, for transitioning children between school or community sponsored activities.

26. The policy on the steps the center will take prior to the suspension, expulsion, or request to parents/guardians to withdraw a child from care due to concerns about the child's behavioral issues. These procedures must be consistent with the center's policy on guidance, positive instruction, discipline and consequences, and include documentation of the steps taken to understand and respond to challenging behavior.

2.506 COMMUNICATION, EMERGENCY, AND SECURITY PROCEDURES

A. The center must notify the parents/guardians in writing of significant changes in its services, policies, or procedures so that they can decide whether the center continues to meet the needs of their child(ren).

B. For security purposes, a daily sign-in/sign-out sheet or other mechanism for parents/guardians must be maintained by the center. The sign-in/sign-out mechanism must include, for each child in care, the date, the child's name, the time when the child arrived and left the center, and the parent/guardian's signature or other identifier. With a parent/guardian's approval, a child five (5) years of age or older may sign in and out instead of the parent/guardian. Staff must verify attendance periodically throughout the day.

C. During the hours the center is in operation, the center must provide an office and/or monitored telephone number known to the public and available to parents/guardians in order to provide immediate access to the center.

D. If the center has a permanent site, there must be a telephone at the site.

E. Emergency telephone numbers must be posted at each permanent site and taken on all field trips and during mobile school-age child care programs. The emergency numbers must include, at a minimum, 911, or a rescue unit if 911 isn't available; the clinic or hospital nearest to the activity location; ambulance service; fire, police, and health departments; and Rocky Mountain Poison Control.

F. Mobile school-age child care programs must have a way to be contacted while in transit.

G. The center must be able to provide emergency transportation to a health care facility at all times either via program vehicle or the emergency medical services system.

H. The director of the center or the director's delegated substitute must have a means for determining who is present at the center at all times.

I. A written policy regarding visitors to the center must be posted and a record maintained daily by the center that includes, at a minimum, the visitor's name and address and the purpose of the visit. At least one piece of photo identification must be inspected for individuals who are strangers to personnel at the center.

J. With the exception of children who are allowed to sign themselves in and out, the center must release a child only to the adult(s) for whom written authorization has been given and is maintained in the child's record (see rule section 2.525). In an emergency, the child(ren) may also be released to an adult for whom the child's parent or guardian has given verbal authorization. If the staff member who releases the child does not know the adult, photoidentification must be required to assure that the adult is authorized to pick up the child.

K. The center must have a procedure for dealing with individuals not authorized by the parent/guardian of a child who attempts to have the child released to them (see rule section 2.505(A)(15)).

L. The center must have a written procedure for closing the center at the end of the day to ensure that all children are picked up (see rule section 2.505(A)(16)).

PERSONNEL

2.507 GENERAL REQUIREMENTS FOR ALL PERSONNEL

A. All personnel and volunteers at the center must demonstrate knowledgeable decision-making, judgment, and concern for the proper care and well-being of children.

B. All personnel and volunteers must not engage in actions that would endanger the health, safety, or well-being of children.

C. Each staff member and regular volunteer as defined in rule section 2.510 must complete an annual health history. The health history must be maintained by the center in a secure location.

D. The duties and responsibilities of each staff position and the lines of authority and responsibility within the center must be in writing. At the time of employment, staff members must be informed of their duties and assigned a supervisor.

E. Prior to working with children, the staff member must read and be instructed on all of the policies and procedures of the center outlined in rule section 2.505. Staff members must sign a statement indicating that they have read and understand the center's policies and procedures

F. Day camp staff must receive a minimum of fifteen (15) hours of pre-camp training, in addition to Department-approved First Aid and Cardiopulmonary Resuscitation (CPR) training. Pre-camp training must include all training activities that staff members participate in as a whole. Training should include, but not be limited to, familiarizing staff with the camp mission, site emergency policy and procedures, how to supervise and facilitate activities with campers, and health care policies and procedures. Policies and procedures must be in writing. Staff will be supervised and additional training may be provided if needed. Day camps must have a system in place to provide staff the essential training information for late hires.

G. The center must have a staff development plan that includes a minimum of fifteen (15) clock hours of ongoing training each year for all staff. This requirement does not apply to day camps. At least three (3) clock hours per year must be in the focus of social emotional development. The fifteen (15) clock hours of training does not include recertification in First Aid and CPR. Ongoing training and courses must demonstrate a direct connection to one or more of the following competency areas:

    1. Child growth and development, and learning or courses that align with the competency domains of child growth and development;

    2. Child observation and assessment;

    3. Family and community partnership;

    4. Guidance;

    5. Health, safety and nutrition;

    6. Professional development and leadership;

    7. Program planning and development; and

    8. Teaching practices:

        a. Each one (1) semester hour course with a direct connection to the competency area listed in rule section 2.507(G), taken at a regionally accredited college or university may count as fifteen (15) clock hours of ongoing training.

b. Training hours completed can only be counted during the year taken and cannot be carried over.

H. To be counted for ongoing training, the training certificate must have documentation that includes:

1. The title of the training;

2. The competency domain;

3. The date and clock hours of the training;

4. The name or signature, or other approved method of verifying the identity of trainer or entity;

5. Expiration of training if applicable; and

6. Connection to social emotional focus if applicable.

I. All staff members must complete a Department-approved standard precautions training prior to working with children. This training must be renewed annually and may count towards ongoing training requirements.

J. All staff members must complete a building and physical premises safety training prior to working with children. The training must include:

1. Identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water and vehicular traffic; and

2. Handling and storage of hazardous materials and the appropriate disposal of biological contaminants.

K. All staff member responsible for the collection, review and maintenance of the child immunizations records must show evidence they have completed the Colorado Department of Public Health and Environment (CDPHE) immunization course within (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

L. All staff members and regular volunteers must complete a Department-approved training about child abuse prevention, including common symptoms and signs of child abuse within (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

M. All staff must have at least one (1) hour of child development training within ninety (90) days of employment. This training must include the major domains (cognitive, social, emotional, physical development and approaches to learning). This training is required once and will count toward ongoing training requirements if taken after the date of hire.

N. Prior to working with children, each staff member must read and be trained on the center’s policies and procedures for the administration of medications. Staff members must sign a statement indicating that they have read and have been trained on the center's administration of medications policies and procedures.

2.508 REQUIRED PERSONNEL AND QUALIFICATIONS

A. Program Director

Each center must have an on-site program director who must be at least twenty-one (21) years of age. The program director must have demonstrated to the hiring authority maturity of judgment, administrative ability, and the skill to appropriately supervise and direct school-age children in an unstructured setting.

1. The program director must have verifiable education or training in work with school-age children in such areas as recreation, education, scouting or 4-H; and the program director must have completed at least one (1) of the following qualifications:

    a. A four (4) year college degree with a major such as recreation, outdoor education, education with a specialty in art, elementary or early childhood education, or a subject in the human service field;

    b. Two years of college training and six (6) months (910 hours) of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience, since attaining the age of eighteen (18), in the care and supervision of four (4) or more children; or

    c. Three years (5,460 hours) of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience and one of the following qualifications:

        1. Complete six (6) semester hours, or nine (9) quarter hours in course work from a regionally accredited college or university; or

        2. Forty (40) clock hours of training in course work applicable to school-age children and the Department-approved courses in injury prevention, and playground safety for School-Aged Child Care Centers within the first nine (9) months of employment.

2. Satisfactory experience includes experience in the care and supervision of four (4) or more children from the ages of four (4) to eighteen (18) years old, unrelated to the individual, since attaining the age of eighteen (18).

3. The program director is responsible for planning and implementing the program and supervising the staff.

B. Program Leaders

Each program leader must be at least eighteen (18) years of age, demonstrate ability to work with children, and must meet the following qualifications:

1. Complete the Department-approved course in injury prevention;

2. Complete the Department-approved course in playground safety for School-Aged Child Care Centers. This requirement does not apply to day camps that do not regularly use a playground; and

3. Must have at least three (3) months (460 hours) of full-time or equivalent part-time satisfactory and verifiable experience with school-age children.

C. Program Aides

1. Program aides must be at least sixteen (16) years of age. Program aides must work directly under the supervision of the program director or program leaders and must never be left alone with children.

2. Program aides can be counted as staff in determining child care staff ratios.

D. Department-approved Child Care Health Consultant

1. As required by these rules, staff must consult with a current Department-approved Colorado Child Care Health Consultant. To be approved, the Child Care Health Consultant must be one of the following: a licensed registered nurse with knowledge and experience in maternal and child health; a pediatric nurse practitioner; a family nurse practitioner; or a pediatrician. The consultation must be specific to the needs of the center and include some of the following topics: training; delegation and supervision of medication administration and special health procedures; health care; hygiene; disease prevention; equipment safety; interaction between children and adult caregivers; and normal growth and development. Consultation must occur as often as the child care health consultant who is delegating medications and/or medical procedures requires.

2. The date and content of each consultation must be recorded and maintained in the center's files.

3. The center must maintain documentation including the child care health consultant's Department of Regulatory Agencies (DORA) proof of active licensure in good standing, by the Colorado Medical Board or State Board of Nursing as a physician or registered nurse, a brief biography highlighting applicable knowledge, experience and approximate dates worked as a school nurse or Child Care health Consultant commenced.

4. Child care health consultants must complete the Department- approved child care health consultant training prior to consulting with the center. The center must obtain and maintain proof of course completion.

5. All Child Care Health Consultants must show evidence they have completed the Colorado Department of Public Health and Environment (CDPHE) immunization course annually.

E. Employment of maintenance staff, including kitchen service, grounds, and housekeeping employees less than sixteen (16) years of age, must be in compliance with Colorado labor laws.

F. At least one staff member with current Department-approved medication administration training and delegation must be on duty at all times.

G. First Aid and Cardiopulmonary Resuscitation (CPR) Certified Staff

1. For every thirty (30) or fewer children in attendance, there must be at least one (1) staff member who holds current Department-approved First Aid and CPR certificate for all ages of children. Such individuals must be with the children at all times when the center is in operation. If children are at different locations, there must be a First Aid and CPR qualified staff member at each location.

2. In a day camp, all staff members who are eighteen (18) years of age and older must have current Department-approved First Aid and CPR certificates. Uncertified staff members must work with another certified staff member.

3. All employees caring for children, not required by rule to be certified in First Aid and CPR, must complete a Department-approved basic First Aid and CPR module within thirty (30) calendar days of employment and the module must be renewed every two (2) years.

2.509 REQUIRED STAFF SUPERVISION

A. A program director must be present at the center at least sixty percent (60%) of any day the center is in operation. An individual who meets one of the following requirements must be present for the remaining forty percent (40%) of the day:

1. A qualified program leader who is at least twenty-one (21) years of age;

2. A qualified program leader who is at least eighteen (18) years of age and has at least one (1) year (1820 hours) full-time or equivalent part-time verifiable experience working with children; or

3. Two qualified program leaders who are at least nineteen (19) years of age.

B. If the program director cannot be present sixty percent (60%) of any day the center is in operation, an individual who meets program director qualifications must substitute for the director.

C. There must be at least one (1) program leader providing supervision with each group of thirty (30) or fewer children cared for by the center. When four- (4) year-olds are in attendance, there must be at least one program leader providing supervision with each group of twenty-four (24) or fewer children cared for by the center.

D. The maximum group size for children over the age of five (5) is thirty (30) children. When four (4) year olds are in attendance the maximum group size is twenty-four (24). When the center has the capacity to care for multiple groups of children, they must be separated into developmentally and age appropriate activities. Groups are not required to be separated from each other by permanent or portable dividers or walls.

E. Group size for children in care may be exceeded for attendance time, meal and snack time, special occasions and activities. The room capacity must not be exceeded.

F. There must be one (1) staff member for each fifteen (15) children in attendance. When four (4) year olds are in attendance, there must be at least one staff member for each twelve (12) or fewer children cared for by the center.

Ages of Children	**Number of Staff**	**Maximum Group Size**
Mixed age group with 4 year olds	1 staff member to 12 children	24 children
5 years and older	1 staff member to 15 children	30 children

G. At any time when nine (9) or more children are in care at the center, there must be at least one (1) program leader actively supervising children and another responsible person at least sixteen (16) years of age on the premises. When eight (8) or fewer children are present, there must be at least one (1) program leader on duty and a second staff member on call who is immediately available in an emergency.

H. At all times, school-age child care personnel must be directly supervising the children.

I. In a mobile day camp program, an outdoor-based day camp program, or anytime a building based program is away from the facility, the staff ratio given in rule section 2.508 must be maintained, but there must be at least two (2) program leaders at all times with the children.

2.510 VOLUNTEERS

A. If volunteers are used by the center, there must be a clearly established policy in regard to their function, orientation, and supervision.

B. References must be obtained for volunteers who are counted in the staff to child ratio, consistent with rule sections 2.120 and 2.121 of the General Rules for Child Care Facilities.

C. Volunteers that work more than fourteen (14) calendar days (112 hours) per calendar year who are used to meet staff to child ratio must be equally qualified as a program director, program leader, or program aide and must have complete staff records as defined in rule section 2.526.

D. Volunteers unless equally qualified must be directly supervised by a program director or program leader.

E. Volunteers must be given instruction as to the center's policies and procedures.

CHILD CARE SERVICES

2.511 ADMISSION PROCEDURE

A. The center can only accept children of the ages and capacity for which it has been licensed.

B. Admission procedures must be completed prior to the child's first day in care at the center and must include:

1. Completion of the registration information for inclusion in the child's record, as required in rule section 2.525; and

2. Providing the parent(s)/guardian(s) with a copy of the center's policies and procedures.

2.512 HEALTH CARE

A. Statements of Health Status

1. At the time of enrollment, the parent(s)/guardian(s) must provide for each child entering the center:

a. A complete health history for each child, including any communicable diseases; chronic illnesses or injuries; known drug reactions and allergies; current medications; any special diets needed; and the name address and phone number for the child's health care provider and dentist.

b. Documentation of school-required immunization status or Certificate of Medical or Nonmedical Exemption, is required by the Colorado Board of Health. Up-to-date school-required immunizations must be documented as specified on the Colorado Department of Public Health and Environment Certificate of Immunization or on an "approved alternate" Certificate of Immunization, defined in Colorado Department of Public Health and Environment regulation at 6 CCR 1009-2:VI(A), (May 15, 2023), no later editions or amendments are incorporated. These regulations are available from the Colorado Department of Public Health and Environment at no cost at https://www.coloradosos.gov/CCR/Welcome.do. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours. Colorado law requires proof of immunization status or exemption be provided prior to or on the first day of admission.

(1) If the parent or legal guardian of a child wants a nonmedical exemption from the immunization requirement based on a religious belief whose

teachings are opposed to immunizations or a personal belief that is opposed to immunizations, the child's parent or legal guardian must:

(a) Nonmedical Exemption with a signature from an immunizing provider in Colorado, or

(b) Submit the Colorado Department of Public Health and Environment Certificate of Nonmedical Exemption (May 2023) received upon the completion of Colorado Department of Public Health and Environment Online Immunization Education Module (Aug. 2021). The Certificate of Nonmedical Exemption and Education Module are herein incorporated by reference, no later editions or amendments are incorporated. The Certificate and Education Module are available at no cost from the Colorado Department of Public Health and Environment at https://cdphe.colorado.gov/vaccine-exemptions. The Certificate is available for public copying and inspection at the Colorado Department of Early Childhood, 720 S. Ash St., Denver, CO 80246, during normal business hours.

2. Guest Child care Facilities as defined in section 26.5-5-303(10), C.R.S., are exempt from obtaining immunization records for students when all of the following conditions are met:

   a. Students attend for fifteen (15) days or less in a fifteen-consecutive-day period, no more than twice in a calendar year; and

   b. At least sixty (60) calendar days separate the two sessions within the calendar year; and

   c. The center notifies parents/guardians that non-immunized children are enrolled on the above short-term basis.

3. The center must inform its child care health consultant (CCHC) prior to the first day of care of the enrollment of a child with special health care needs, if known, so staff receives training, delegation and supervision as indicated by the child's individualized health care plan.

   a. If the center is located at an elementary school and all the children attend that school, the immunization records may be maintained at the school office, but must be accessible to center staff members and licensing specialists during the hours the center is open.

B. Emergency Procedures

1. Written authorization for emergency medical care must be in the child's file as required in rule section 2.525.

2. When accidents, injuries, or illnesses occur, the program director or responsible adult in charge must notify the child's parent or guardian and, if necessary, seek medical care for the child.

3. A responsible staff member must be directly supervising any ill or injured child.

4. Portable first aid kits must be available to staff at all times, including field trips, and must be located out of reach of children and maintained in a sanitary condition. First aid kits must be checked and restocked on at least a monthly basis.

C. Medication

1. Any un-expired routine medication, prescription and non-prescription (over-the-counter) medications must be administered only with a current written order of a health care provider with prescriptive authority and with written parental consent. Home remedies, including homeopathic medications, must never be given to a child.

2. The written order by the health care provider with prescriptive authority must include:

   a. Child's name;

   b. Licensed prescribing practitioner name, telephone number, and signature;

   c. Date authorized;

   d. Name of medication and dosage;

   e. Time of day medication is to be given;

   f. Route of medication;

   g. Length of time the medication is to be given;

   h. Reason for medication (unless this information needs to remain confidential);

   i. Side effects or reactions to watch for; and

   j. Special instructions.

3. Medications must be kept in the original labeled bottle or container. Prescription medications must contain the original pharmacy label.

4. Over-the-counter medication must be kept in the originally labeled container and be labeled with the child's first and last name.

5. In the case medication needs to be given on an ongoing, long-term basis, the authorization and consent forms must be reauthorized on an annual basis. Any changes in the original medication authorization require a new written order by the prescribing practitioner and a change in the prescription label.

6. Staff designated by the program director to give medications must complete the Department-approved medication administration training and have current annual delegation or more often as determined by the Child Care Health Consultant. Delegation must be from the center's Current Child Care Health Consultant who must observe and document the competency of each staff member involved in medication administration. All staff administering medication must have current Department-approved Cardiopulmonary Resuscitation (CPR), first aid training prior to administering medication with the following exceptions:

   a. Staff determined by the program director, in consultation with the Child Care Health Consultant, to be responsible for providing routine emergency

medications covered in the approved medication administration training for the treatment of severe allergies or inhaled medications for the treatment of asthma must receive training and delegation from their Child Care Health Consultant for those medications only. Staff must then provide those medications to children based on the instructions from the child's individualized health care plan.

b. Staff determined by the director, in consultation with the Child Care Health Consultant, to be responsible for providing medications not covered in the approved medication administration training must also be permitted to administer medications and/or medical treatments such as emergency seizure medication, insulin, or oxygen with individualized training and delegation from the Child Care Health Consultant based on instructions from the child's individualized health care plan.

c. Staff may be trained and delegated in the administration of a single rescue medication or rescue medical intervention by the center's Child Care Health Consultant. Such training and delegation must qualify the staff member to provide a rescue medication or treatment for a specific child based on instructions from the child's individualized health care plan.

7. All medications, except those medications specified in the Department's approved medication administration training as emergency medications, must be kept in an area inaccessible to children, but available to staff trained in administering medication. If refrigeration is required, the medication must be stored in either a separate refrigerator or a leak proof container in a designated area of a food storage refrigerator, separate from food and inaccessible to children. Controlled medications must be counted and safely secured, and specific policies regarding their handling require special attention in the centers policies. Access to these medications must be limited (see sections 27-80-210 and 12-280-134(3), C.R.S.).

8. Emergency medications must be stored in accordance with the Child Care Health Consultant's recommendation. Emergency medications are not required to be stored in a locked area. Emergency medications may be stored in an area easily accessible and identifiable to staff but out of reach of children. When away from the classroom, staff must carry emergency medications in a bag on their person.

9. A written medication log must be kept for each child. This log is part of the child's records. The log must contain the following:

a. Child's name;

b. Name of the medication, dosage, and route;

c. Time medication is to be given;

d. Special instructions;

e. Name and initials of the individuals giving the medication; and

f. Notation if the medication was not given and the reason.

10. Topical preparations such as petroleum jelly and bug sprays may be administered to children with written parental authorization. These preparations may not be applied to open wounds or broken skin unless there is a written order by the prescribing practitioner.

11. The center must have a written policy on the storage and access of inhalers and epinephrine auto injectors for all children in care. This policy must be reviewed by the Child Care Health Consultant.

12. The center may, with written parental consent and authorization of the prescribing health care provider, permit children who have asthma to carry their own inhalers or children who are at risk of anaphylaxis to carry their own epinephrine, and use them as directed. The center must have a specific written policy on the storage and access of inhalers and epinephrine for children who are permitted to carry or self-administer these medications. The policy must include a contract with the parent(s)/guardian(s), and child acknowledgement, assigning levels of responsibility of each individual. This contract must accompany orders for the medication from the health care provider, along with confirmation from Child Care Health Consultant that the student has been instructed and is capable of self-administration of the prescribed medications.

13. All staff members and Child Care Health Consultants must be aware of which children have asthma and severe allergies, and which of those may administer their own inhaler or auto injectors.

D. Sun Protection

1. The center must obtain the parent/guardian's written authorization and instructions for applying sunscreen or use of another form of parent/guardian approved sun protection. A health care provider's permission is not needed to use sunscreen at the center.

2. When supplied for an individual child, the sunscreen must be labeled with the child's first and last name.

3. If sunscreen is provided by the center, parents must be notified in advance, in writing, of the type of sunscreen the center will use.

4. Children may apply sunscreen to themselves under the direct supervision of a staff member.

5. The center must apply sunscreen, have the child apply sunscreen, have the parent or guardian apply sunscreen, or use another form of parent or guardian approved sun protection for children prior to children going outside. Sunscreen must be reapplied as directed by the product label.

E. Control of Communicable Illness

1. When children show signs of communicable illness, they must be separated from other children, the parent(s) or guardian(s) must be notified, and the center must consult a medical physician or medical facility as needed regarding treatment.

2. Staff members with a communicable illness must not be permitted to work or have contact with children or other staff members if the illness could be readily transmitted during normal working activities.

2.513 PERSONAL HYGIENE

A. Children with specific toileting needs

The center must have one (1) or more designated change areas for all children in need of changing. The change area must:

1. Meet a child's individual and developmental needs and be large enough to accommodate the size of the child;

2. Have a place inaccessible to children for storing all change supplies and disinfecting solutions and products; and

3. Have sufficient supplies.

2.514 FOOD AND NUTRITION

A. The center must show evidence that all meals and snacks provided by the center must meet current United States Department of Agriculture (USDA) Child and Adult Care Food Program meal pattern guidance and requirements published by the USDA Food Nutrition Service at https://www.cacfp.org/meal-pattern-guidance/ (April 2016) and 7 C.F.R. sections 210.10 and 226.20 (July 1, 2022), herein incorporated by reference. No later editions or amendments are incorporated . These regulations are available at no cost from the USDA Food Nutrition Service at https://www.ecfr.gov. These regulations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours. Children who are at the center for more than four (4) hours, day or evening, must be offered a meal.

B. Centers must not provide sugar sweetened beverages to children. These are liquids that have been sweetened with various forms of sugars that add calories and include, but are not limited to: soda, fruitades, fruit drinks, flavored milks, and sports and energy drinks.

C. If 100% fruit juice, which is not a sugar sweetened beverage, is offered as part of meals and/or snacks, it must be limited to no more than twice per week.

D. In centers that do not regularly provide a meal, if a child brings a meal from home that does not appear to meet current USDA Child and Adult Care Food Program meal pattern requirements, the center must have foods available to offer as a supplement to that meal.

E. Meal menus must be planned at least one week in advance, dated, and available to parents. After use, menus must be filed and retained for three (3) months. Records must be available for periodic review and evaluation.

F. The size of servings must be suitable for the child's age and appetite, and sufficient time must be allowed so that meals are unhurried.

2.515 GUIDANCE

A. Guidance must be appropriate and constructive or educational in nature and may include such measures as diversion, separation of the child from situation, talking with the child about the situation, or praise for appropriate behavior.

B. Children must not be subjected to physical or emotional harm or humiliation.

C. The director must not use, or permit a staff member or child to use, corporal punishment as defined in section 22-1-140, C.R.S.

D. Guidance must not be associated with food, rest, or toileting. Children should never be punished for toileting accidents. Children must not be denied food or forced to eat as a disciplinary measure.

E. Separation, when used as guidance, must not exceed five (5) minutes and must be appropriate for the child's age. The child must be in a safe, lighted, well-ventilated area and be within sight and hearing of an adult. The child must not be isolated in a locked or closed area.

F. Verbal abuse and derogatory remarks about the child are not permitted.

G. Authority for guidance must not be delegated to other children, and the center must not sanction one child punishing another child.

H. Physical exercise must not be used as a form of guidance.

2.516 TRANSPORTATION

A. Transportation Provided by the Center

1. The center is responsible for any children it transports.

2. The center must obtain written permission from parents/guardians for any transportation of their child during child care hours.

3. The number of staff members who accompany children when being transported in the vehicle must meet the child care staff ratio found at rule section 2.509. The driver of the center vehicle is considered a staff member.

4. Children must not be permitted to ride in the front seat of a vehicle unless they are secured in a seat belt that is safe and free from hazard.

5. Children must be loaded and unloaded out of the path of moving vehicles.

6. Children must remain seated while the vehicle is in motion. Children must not be permitted to stand or sit on the floor of a moving vehicle, and their arms, legs, and heads must remain inside the vehicle at all times.

7. Transportation arrangements for school-age children must be by agreement between the center and the children's parents/guardians, *i.e.*, whether the children can walk, ride a bicycle or travel in a car. The center must monitor the children to ensure they arrive at the center when expected and follow up on their whereabouts if they are late. Written permission from parents or guardians for their children to attend community functions after school hours must include agreements regarding transportation.

8. Prior to a field trip or other excursion, the center must obtain information on liability insurance from parents/guardians and staff who transport children in their own cars and verify that all drivers have valid driver's licenses.

B. Requirements for Vehicles

1. Any vehicle the center uses for transporting children to and from the center or during program activities must meet the following requirements:

a. The vehicle must be enclosed and have door locks;

b. The seats of the vehicle must be constructed and installed according to the vehicle manufacturer's specifications;

c. The vehicle must be kept in satisfactory condition to assure the safety of occupants; and

d. Modifications to vehicles including, but not limited to, the addition of seats and seat belts must be completed by the manufacturer or an authorized representative of the manufacturer. Documentation of such modifications must be available for review.

2. Any child transported by the center must be properly restrained in a child restraint system that meets the requirements of Colorado child passenger safety laws at sections 42-4-236 and 42-4-237, C.R.S., that requires:

a. Children who are under eight (8) years of age and who are being transported, shall be properly restrained in a child restraint system, according to the vehicle and child restraint system manufacturer's instructions.

b. Children who are at least eight (8) years of age but less than fifteen (15) years of age who are being transported, shall be properly restrained in a safety belt or child restraint system according to the vehicle and child restraint system manufacturer's instructions.

(1) Children who meet the requirements to be restrained in a safety belt must be instructed and monitored to keep the seat belt properly fastened and adjusted.

c. Two (2) or more children must never be restrained in one (1) seat belt or child restraint system.

3. In vehicles with a manufacturer's established capacity of sixteen (16) or more passengers, seat belts for passengers are not required.

C. Requirements for Drivers of Vehicles

1. All drivers of vehicles transporting children must operate the vehicle in a safe and appropriate manner.

2. All drivers of vehicles owned or leased by the center in which children are transported must have a current Department-approved First Aid and safety certificate that includes Cardiopulmonary Resuscitation (CPR) for all ages of children.

3. In each vehicle used to transport children, drivers must have access to a First Aid kit.

4. The driver must ensure that all doors are secured at all times when the vehicle is moving.

5. The driver must make a good faith effort to ensure that each child is properly belted throughout the trip.

6. The driver must not eat or use a cellular or other mobile device while driving.

7. The required staff to child ratio must be maintained at all times.

8. All drivers must be at least twenty (20) years of age.

9. Drivers must complete a minimum of (4) four hours of driver training prior to transporting children. The driver training curriculum may be developed and administered by the center

and must include at a minimum: behind the wheel training; participant transport attendance procedures, including taking attendance at the destination; managing behavioral issues; loading and unloading procedures; daily vehicle inspection procedures; proper tire inflation; emergency equipment and how to use it; accident procedures; passenger illness procedures; procedures for backing up; and vehicle evacuation.

PROGRAM ACTIVITIES

2.517 ACTIVITY SCHEDULES

A. The center must provide parents/guardians with a list of activities it offers.

B. Parents or guardians must be given the opportunity to indicate to the staff of the center if they do not want their child to participate in an activity.

C. Parents/guardians must be notified in advance of all activities that will occur away from the center.

D. Television viewing, including videos, should not be permitted without the approval of a child's parents/guardians, who must be advised of the center's policy regarding television and video viewing.

E. A mobile day camp program must establish a daily itinerary and make available a copy to each child's parent or guardian. A copy must also be or file at the program's headquarters. The itinerary should be followed as closely as possible. In case of an emergency or change in the itinerary, the headquarters of the mobile day camp must be notified immediately. Parents/guardians must be instructed to contact the main headquarters to determine the exact location of their child.

2.518 PHYSICAL ACTIVITY

A. Daily physical gross motor activities, with or without equipment or materials, must be provided outdoors, or indoors during inclement weather, for no less than sixty (60) minutes total for programs operating over five (5) hours per day. Activities do not have to occur all at one time.

B. Daily physical gross motor activities, with or without equipment or materials, must be provided outdoors or indoors during inclement weather, for no less than thirty (30) minutes total for programs operating from three (3) to five (5) hours per day. Activities do not have to occur all at one time.

C. Daily physical gross motor activities, with or without equipment or materials, must be provided outdoors or indoors during inclement weather, for no less than fifteen (15) minutes total for programs operating less than three (3) hours per day. Activities do not have to occur all at one time.

2.519 SCREEN TIME AND MEDIA USE

A. All media that children are exposed to must not contain explicit language or topics.

B. All television, recorded media, computer, tablet, cell phones, video games and other media devices are prohibited during snack or meal times except during a planned special occasion.

C. The center must develop a media and internet usage plan outlining screen time and media use related to their curriculum. The media plan must have information on ongoing communication with

children about safe online practices. The center must obtain a signed document stating that the parents/guardians have received this plan, and agree to the activities described in the plan.

D. There is no time restriction for children using personal adaptive equipment or assistive technology.

2.520 EQUIPMENT AND MATERIALS

A. In a building based school-age child care center, rest time and rest equipment must be provided for school-age children who require a rest time.

B. Children at the center must have access to age-appropriate materials and equipment from at least the following categories:

1. Activity supplies;

2. Manipulatives and games;

3. Recreation equipment;

4. Library items; and

5. Science equipment and materials.

C. Children must wear helmets when riding scooters, bicycling, skateboarding, or rollerblading.

2.521 FIELD TRIPS

A. On a field trip or during a mobile school-age child care program:

1. The center must notify the children's parents /guardians in advance of any field trip. The staff-child ratios found at rule section 2.509 must be maintained at all times;

2. All groups of children must be directly supervised by a qualified program director or program leader at all times;

3. An accurate itinerary of each field trip must remain at the center;

4. The staff must have the following information about each child: parents/guardians contact information; health care provider’s name, address, and phone number; and the written authorization from parent(s)/guardian(s) for emergency medical care.

5. If children attending the field trip require medications to be administered during the field trip or have special health needs, a staff member with current medication administration training and delegation must attend the field trip;

6. A list of all children and staff on a field trip must be kept at the center; and

7. A copy of the emergency disaster plan must accompany staff offsite.

BUILDING AND FACILITIES

2.522 FACILITY REQUIREMENTS

A. The mobile day camp program and the outdoor-based day camp program may use a public park or playground as a gathering place if the program primarily includes field trips away from the gathering place. Such programs must have a contingency plan for facilities to use during increment weather. The plan must be available to parents/guardians on a daily basis.

B. If a room(s) inside a building are used for indoor care at least thirty (30) square feet of floor space per child is required. Indoor space is exclusive of kitchen, toilet rooms, office, staff rooms, hallways and stairways, closets, laundry rooms, and furnace rooms.

C. When a building is being used during the summer months by a center specifically as a gathering place at the beginning and end of the day, the thirty (30) square feet requirement need not apply. The total amount of time during which the number of children present may exceed the thirty (30) square feet requirement must not exceed three (3) hours. This time must be divided evenly between the morning and the evening.

D. The building based school-age child care center must provide access to an outdoor play area. The outdoor play area may be a city park or public school ground. The play area must meet the following requirements:

1. The center must provide a total outside play area of at least seventy-five (75) square feet per child for a minimum of one-third of the licensed capacity of the center or a minimum of 1500 square feet, whichever is greater;

2. Access to a shaded area, sheltered area, or inside building area must be provided at all times to guard children against the hazards of excessive sun and heat;

3. The outdoor play area must be maintained in a safe condition by removing debris, dilapidated structures, and worn and broken play equipment. The center must identify hazardous, high-risk areas. These areas must be monitored to reduce the possibility of injury and accidents;

4. Outdoor play areas provided by the center must not have equipment that exceeds six (6) feet in height for any surface area intended for children's play unless equipped with a protective barrier to prevent children from falling; and

5. All outdoor climbing equipment over eighteen (18) inches provided by the center must have least six (6) inches resilient surface throughout the use zone.

2.523 TOILET FACILITIES

A. Children must be allowed the use of gender-segregated toilet facilities that are consistent with their gender identity, with toilets separated by partitions to provide privacy.

B. There must be a minimum of one (1) toilet per thirty (30) or fewer children for which the center is licensed. Hand-washing facilities must be available at the ratio of one (1) sink per thirty (30) or fewer children. After April 1, 2018, all new construction must have a minimum of one (1) toilet and one (1) hand washing sink per every fifteen (15) or fewer children for which the center is licensed.

2.524 FIRE AND OTHER SAFETY REQUIREMENTS

A. General Requirements

1. Buildings must be kept in good repair and maintained in a safe condition.

2. Major cleaning is prohibited in rooms occupied by children.

3. Volatile substances, such as gasoline, kerosene, fuel oil, and oil-based paints, firearms, explosives, and other hazardous items, must be stored away from the area used for child care and be inaccessible to children.

4. Combustibles, such as cleaning rags, mops, and cleaning compounds, must be stored in well-ventilated areas separated from flammable materials and stored in areas inaccessible to children.

5. Closets, attics, basements, cellars, furnace rooms, and exit routes must be kept free from accumulation of extraneous materials.

6. All heating units, gas or electric, must be installed and maintained with safety devices to prevent fire, explosions, and other hazards. No open-flame gas or oil stoves, unscreened fireplaces, hot plates, or unvented heaters can be used for heating purposes. All heating elements, including hot water pipes, must be insulated or installed in such a way that children cannot come in contact with them. Nothing flammable or combustible can be stored within three (3) feet of a hot water heater or furnace.

7. Indoor and outdoor equipment, materials, and furnishings must be sturdy, safe and free of hazards.

8. Equipment, materials, and furnishings, including durable furniture such as tables and chairs, must be stored in a manner that is safe for children.

9. Extension cords cannot be used in place of permanent wiring.

10. Corridors, halls, stairs, and porches must be adequately lighted. Operable battery-powered lights must be provided in locations readily accessible to staff in the event of electric power failure.

B. Fire Safety

1. Every building and structure must be constructed, arranged, equipped, maintained, and operated so as to avoid undue danger to the lives and safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time reasonably necessary for escape from the building or structure in case of fire or other emergency.

2. Every building and structure must have at least two (2) approved, alternate means of egress from each floor of the building or to a common hallway leading to the exterior. They must be at different locations.

3. Every exit must be clearly visible, or the route to reach it must be conspicuously indicated. Each path of escape must be clearly marked.

4. In every building or structure, exits must be arranged and maintained so as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. Locks or fastening devices to prevent free escape from the inside of any building must not be installed. Only panic hardware or single-action hardware is permitted on a door or on a pair of doors. All door hardware must be within the reach of children.

5. If the building in which the center operates has a security lock on outside exit doors, the center must obtain written permission from the local fire department; and there must be a written sign attached to the door instructing staff that the security lock is not to be utilized when children are present and the center is in operation.

6. Every building and structure must have an automatic or Department-approved manually operated fire alarm system to warn occupants of the existence of fire or to facilitate the orderly conduct of fire exit drills.

RECORDS AND REPORTS

2.525 CHILDREN'S RECORDS

A. The center must maintain and update annually a record on each child that includes:

1. The child's full name, age, current address, and date of enrollment;

2. Names, home and employment addresses and telephone numbers, which may include cell phone numbers, and e-mail of parents/guardians if available;

3. Any special instructions as to how the parents/guardians can be reached during the hours the child is at the center;

4. Names and telephone numbers of persons other than parents/guardians who are authorized to take the child from the center;

5. Names, addresses, and telephone numbers of persons who can assume responsibility for the child in the event of an emergency if parents/guardians cannot be reached immediately;

6. Name, address, and telephone number of the child's physician, dentist, and hospital of choice;

7. A complete health history including communicable diseases, chronic illnesses or injuries, immunization history, known drug reactions or allergies, medication records, special diet needs, and health care plans as required in rule section 2.512;

8. A dated written authorization for emergency medical care signed and submitted annually by the parent or guardian. The authorization must be notarized if required by the local health care facility;

9. Written authorization from a parent or guardian for the child to participate in field trips and to participate in program activities, listing all exclusions from authorization;

10. Written authorization from a parent/guardian for the center to transport the child to and from school, whether by walking or driving; and

11. Reports of accident, illness, or injury requiring medical attention occurring during care.

2.526 STAFF RECORDS

A. The center office must maintain a record for each staff member, paid or volunteer, which includes the following:

1. Name, address, and birth date of the individual;

2. The date that the staff member was employed by the center;

3. Name, address, and phone number of the person(s) to be notified in the event of an emergency;

4. Verification of the staff member's certifications, qualifications, and training requirements;

5. Copies of written references or notes of phone references, as required by rule section 2.510;

7. Verification that a criminal record check with the Colorado Bureau of Investigation and federal bureau of investigation is in process, or a copy of the results of the staff member's criminal record check; and

8. Verification that a review of the Colorado Department of Human Service's automated system for reporting child abuse and neglect has occurred or is in process.

B. Each staff member's personnel file must contain all required information within thirty (30) working days of the first day of employment.

2.527 ADMINISTRATIVE RECORDS AND REPORTS

A. The following records must be on file at the center:

1. Records of enrollment, daily attendance for each child, and daily record of time child arrives at and departs from the center;

2. Current health department child care inspection report issued for the assigned license number within the past two (2) years;

3. Current fire department inspection report issued within the past two (2) years; and

4. A list of current staff members, substitutes, and staffing patterns.

B. Each center must submit a report in writing to the Department using the online injury reporting system of any accident or illness occurring at the center that resulted in medical treatment by a physician or other health care professional, hospitalization, or death. This report must be made within twenty-four (24) hours after the accident or illness occurred.

C. A report about a fatality must include:

1. The child's name, birth date, address, and telephone number;

2. The names of the child's parents or guardians and their address and telephone number if different from those of the child;

3. Date of the fatality;

4. Brief description of the incident or illness leading to the fatality;

5. Names and addresses of witnesses or persons who were with the child at the time of death; and

6. Name and address of police department or authority to which the report was made.

D. The center must maintain records of reports of communicable illness made to the Colorado Department of Public Health and Environment or local public health agency.

E. The center must submit to the Department as soon as possible but not longer than twenty-four (24) hours a written report about any child who has been separated from the group outside of the

supervision of their assigned staff member or for whom the local authorities have been contacted. Such report must indicate:

1. The name, birth date, address, and telephone number of the child;

2. The names of the parents/guardians and their address and telephone number if different from those of the child;

3. The date when the child was lost;

4. The location, time, and circumstances when the child was last seen;

5. Actions taken to locate the child; and

6. The name of the staff person supervising the child.

2.528 CONFIDENTIALITY AND RETENTION

A. The center must maintain complete records of personnel and children as required in rule sections 2.525, 2.526, and 2.527.

B. The confidentiality of all personnel and children's records must be maintained (see rule sections 2.128 through 2.130 of the General Rules for Child Care Facilities).

C. Personnel and children's records must be available, upon request, to authorized personnel of the Department.

D. If records for organizations having more than one center are kept in a central file, duplicate identifying and emergency information for personnel and children must also be kept on file at the center attended by the child.

E. The records of children must be maintained by the school-age child care center for at least three (3) years.

2.600 RULES REGULATING SPECIAL ACTIVITIES

2.601 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 through 24-4-204 (the “APA”), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101 through 26.5-6-103 (the “Early Childhood Act”), C.R.S., the Child Care Licensing Act, sections 26.5-5-301 through 26.5-5-329, C.R.S.; and the Child Care Development and Block Grant Act of 2014, 42 U.S.C. sec. 9858e.

The specific rulemaking authorities granted for Special Activities include section 26.5-5-314, C.R.S.

2.602 SCOPE AND PURPOSE

These rules and regulations shall govern the processes and procedures to become a licensed child care facility, and the health and safety requirements of licensed child care facilities in Colorado. These rules and regulations shall govern the health and safety requirements for special activities including Swimming, Boating, Rafting, Archery, Riflery, Horseback Riding, Trampoline, Climbing, Hiking, Backpacking, Camping, and Biking.

2.603 APPLICABILITY

The provisions of these rules and regulations shall be applicable to licensed child care providers participating in special activities, which include licensed School Age Child Care, Child Care Centers, , Family Child Care Homes, and Children's Resident Camps.

2.604 GENERAL PROVISIONS

A. There shall be a written program that reflects the purpose of the child care facility, including a list of activities at the child care facility. The written program must be provided to parents.

B. Parents shall be given the opportunity to indicate to child care facility staff whether they do not wish their child to participate in a special activity

C. If the child care facility participates in special activities other than those for which rules are found in this rule section, the child care facility shall develop and follow a written plan which includes at least, the following:

1. The qualifications of the supervisor as applicable to the activity.

2. The qualifications, as applicable, of any other staff members necessary for proper supervision of the activity.

3. The number of necessary staff members needed to supervise the activity.

4. Conditions under which a child may participate in the activity, such as age or skill level of the child.

5. Any special equipment necessary, its supply and condition.

6. Access to medical treatment; and

7. Development of an emergency plan.

D. Paint ball activities where children shoot paint balls at other children are prohibited at a child care facility.

E. The staff member supervising special activities shall possess evidence of appropriate experience, training, and/or certification in the program specialty. The staff member shall be present at the site of the activity whenever the activity is taking place unless otherwise indicated in these rules.

F. The qualified supervising staff member of special activities shall have the following duties:

1. Direct training of other staff members working in the activity.

2. Assign duties to staff members.

3. Assure that all necessary equipment is complete, in good repair, and safe to use.

4. Assure that environmental hazards are not severe enough to cause danger to children.

G. Rules shall be reviewed with children at the beginning of each activity.

H. First Aid supplies shall be available at each special activity site.

I. The staff to child ratio for each type of facility must be followed according to rules for that facility regardless of activity unless the ratio is different for the specified activity, in which case the activity staff to child ratio should apply.

WATER ACTIVITIES

2.605 SWIMMING

A. There shall be a swimming supervisor who, as a minimum, holds a current Red Cross life guard training certificate or equivalent, such as a YMCA or Boy Scout aquatics instructor's certificate. If the child care facility is offering swimming instruction, the swimming supervisor must also hold a Red Cross water safety instructor certificate or equivalent.

B. At any time the swimming area is open, there shall be at the swimming area a staff member who holds at least a current life guard training certificate or equivalent for each thirty (30) campers in the water. There shall be present as least one (1) staff member for each ten (10) children in the water. The lifeguard does not count in the staff to child ratio for supervision of children.

C. The swimming area shall be off limits when appropriate numbers of qualified staff members are not present.

D. If the child care facility uses a pool for which the child care facility is not responsible, the child care facility need not provide a lifeguard if there is a qualified lifeguard provided by the pool. If the pool does not provide a qualified lifeguard, staff members meeting qualifications stated in rule section 2.605(A)-. must be provided by the child care facility. There shall be at least one (1) staff lookout counselor at the pool for each ten (10) children in the water.

E. Swimming area rules and emergency procedures shall be posted in a visible location at the swimming area.

F. The swimming pool or swimming area shall meet the standards of the Colorado Department of Public Health and Environment (CDPHE), defined in Colorado Department of Public Health and Environment regulation 5 CCR 1003-5 (December 15, 2020), herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available from the Colorado Department of Public Health and Environment at no cost at https://www.coloradosos.gov/CCR/Welcome.do. These recommendations are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Denver, CO 80246, during regular business hours. If a child needs to be excluded the camp must consult a doctor or medical facility as to the child’s treatment .

G. If children are permitted to swim in a lake or pond, swimming areas shall be clearly designated

H. Before children are permitted to swim in deep water, swimming skills must be tested by properly trained staff members.

I. There shall be a system known to child and lookout staff for checking the children when children are in the water.

J. The following equipment must be available for use at the pool side or the lake shore in which swimming is permitted:

1. A rescue tube;

2. Reach pole; and

3. Backboard.

K. Where the size of the body of water makes it impossible to reach victims by reach pole, rescue tube or other rescue device, a rescue boat must be available at all times.

L. If a child care facility has shoreline activities such as wading, fishing, ecology or nature studies, the child care facility shall have a written policy which defines qualifications of persons accompanying the group and safety factors to be followed. Staff members shall be acquainted with the policy.

M. In the case of a travel-trip camp, there shall be a minimum of one (1) staff member who holds at least current Red Cross life guard training certificate or equivalent who is responsible for all swimming activities.

2.606 BOATING, CANOEING, SAILING, AND KAYAKING ON FLATWATER

A. The boating supervisor shall hold, at a minimum:

1. A current Red Cross life guard training certificate or equivalent;

2. Boy Scout certificate;

3. Basic small craft instructor, small craft safety, or paddle safety certificate for the type of craft which is to be supervised; or

4. Documentation of experience indicating knowledge and skill in teaching and supervision specific to the watercraft activities to be conducted.

B. The boating supervisor, or staff member equally qualified who has been trained by the boating supervisor, must be on site during the activity.

C. Other staff members shall have appropriate experience and training for the type of craft to be utilized.

D. Whenever children are on the water they shall be wearing a United States Coast Guard approved personal flotation device appropriate to the weight of the child.

E. There shall be a minimum of two (2) lookout staff members at the shoreline and/or on the water at any time when children are on the water in boating, canoeing, kayaking or sailing activities. Hazards such as the size of the lake, the skill of the children, the conditions of the water, and the temperature of the water, shall be taken into account by the supervisor of the activity when determining the number and location of lookout staff necessary with the children, but there shall never be fewer staff with the children than those required in rule section 2.412 of the Rules Regulating Children's Resident Camps; rule section 2.509 of the Rules Regulating School Age Child Care; and rule section 2.217 of the Rules Regulating Child Care Centers .

F. Except for kayaking, there shall be a staff member in any boat which holds one or more children under seven years old.

G. At no time shall the occupancy of the craft exceed the capacity established for the craft by the manufacturer .

H. There shall be a warning device, such as a loud whistle, air horn, or other audible signal device, which can be heard by persons on the water that indicates the need for children and staff to return to the shore

I. Where the size and depth of the body of water indicates, there shall be a rescue boat in close proximity to where the activity takes place. This rescue boat shall be in good repair and shall contain appropriate equipment, such as a rescue tube, reach pole, extra oar, or paddle.

J. Water crafts shall not enter a swimming area when swimmers are in the water.

2.607 BOATING, CANOEING, TUBING, AND KAYAKING ON CLASS I OR II MOVING WATER

A. The boating supervisor shall hold, at a minimum:

1. Current Red Cross life guard training certificate or equivalent;

2. Boy Scout certificate;

3. Basic small craft instructor certificate for the type of craft which is to be supervised; or

4. Documentation of experience indicating knowledge and skill in teaching and supervision specific to the watercraft activities to be conducted.

B. The boating supervisor must be on site during the activity.

C. Children shall only canoe, tube, or kayak on Class II or less water.

D. Supervising staff must be experienced and knowledgeable about the river being used, including the height and speed of the river.

E. The child care facility must have a written policy on evaluating the safety of the river. Supervising staff must be trained on the policy.

F. Each child shall wear a Unites States Coast Guard approved personal flotation device whenever they are on the moving water.

G. The supervisor of this activity shall be trained in Red Cross standard First Aid and safety, and Cardiopulmonary Resuscitation (CPR).

H. The supervisor shall be familiar with rescue techniques with canoes, kayaks, and tubes on moving water and shall train children in these techniques.

I. Rescue equipment appropriate to the activity shall be available, such as rope throw bag and rescue tubes.

2.608 WHITE WATER RAFTING ON CLASS III AND IV RIVERS (CLASSES OF RIVERS ARE THOSE AS DEFINED BY THE INTERNATIONAL SCALE OF RIVER DIFFICULTY)

A. If the child care facility operates white water rafting, the child care facility must have an active River Outfitter license from the Colorado Parks and Wildlife .

B. If a child care facility provides a white water rafting experience by purchase from a river outfitter, the license of the river outfitter must be active.

ARCHERY AND RIFLERY

2.609 ARCHERY

A. The archery supervisor shall have certification, documented training or experience from a recognized organization or certifying body for the type of activities offered.

B. The archery range shall be free from hazards and well-marked. There shall be a clear path to the target which is not obstructed by such things as rocks, trees or branches. Traffic, trail, or other camp activities shall not be placed in the direction of the flight of the arrows.

C. Equipment shall be maintained in safe condition. Bows and arrows shall be inspected for fractures, splinters or cracks before each use. Damaged bows and arrows shall not be utilized.

D. Equipment shall be stored under lock and key when not in use. Bows and arrows shall be used only in the specified archery area.

E. If the child care facility has field archery, a procedure shall be established and posted to provide for the safety of the archers, including issuance of arrows at check-in point of the archery trail, check in of archer at the beginning of the archery trail, and check out when archer has completed the trail.

F. The archery supervisor or a staff person trained and authorized by the archery supervisor must be present at all times when children are present at the archery range or field.

G. All archers shall use the same firing line. Arrows shall be issued only at the firing line.

H. Arrows shall be nocked to bow string after shooters are on the firing line and after the signal to shoot has been given.

I. Before arrows are released, shooters shall have a definite target.

J. Movement must be controlled by a supervising staff member. All persons must stay behind the firing line until the signal to retrieve arrows is given. All arrows shall be retrieved at the same time.

2.610 RIFLERY

A. The riflery supervisor shall hold a National Rifle Association instructor's or assistance instructor's certification in rifle shooting or equivalent certification from a national organization or shall have verified experience equivalent to that necessary to obtain the National Rifle Association Fire Arm certification.

B. If the riflery supervisor is not present at the rifle range whenever children are firing guns, the staff person(s) trained by the riflery supervisor must be present at all times when children are present.

C. The rifle range shall be free from all hazards, away from other activities and traffic of any type; shall be well marked with danger signs or flags; and all blind approaches shall be fenced or blocked off.

D. The range shall be constructed with an appropriately designed bullet-stop so that all bullets will be stopped behind the targets. The bullet-stop shall be free of trees, rocks, boulders, or other objects which may cause a bullet to ricochet away from the bullet-stop.

E. There shall be a well-defined firing line which shall be level with the targets and elevated off the ground. A minimum space of five (5) feet between firing points shall be established or firing points separated by a permanent divider. Targets must be designed to minimize potential for ricochet. Targets cannot depict human form.

F. Only the following types of guns shall be permitted:

1. .22 caliber rimfire, single-shot, bolt-action rifles having no trigger modification other than the factory setting.

2. Pneumatic spring-type and CO_2 air guns may be either .22 caliber or .177 (Ball Bearing (BB) size).

G. Proper condition of the firearms shall be maintained by inspection before and after usage, cleaning as necessary. Firearms that do not function properly shall be repaired and tested before usage.

H. Instruction on the use of firearms shall be presented to the children prior to the use of the rifle range.

I. No more than five (5) cartridges at a time shall be distributed to a child by the responsible supervising staff member and issued only at the firing line.

J. Firing shall be permitted at the firing line only. Observers shall remain behind firing line.

K. Actions of uncased firearms shall be kept open except when on firing line ready to fire.

L. All firearms shall be unloaded immediately upon the command “cease firing” regardless of when this command is given. Actions shall remain open until further commands are given.

M. On ranges where shooters must go down range to change targets and score: movement must be controlled by the supervising staff member.

N. All spent or unspent cartridges must be returned to the supervising staff member.

HORSEBACK RIDING

2.611 HORSEBACK RIDING ACTIVITIES

A. The horseback riding supervisor shall have completed at least one of the following:

1. Certificate from nationally recognized organization or riding school; or

2. Written verification of successful experience in formal horseback riding instruction.

B. The horseback riding supervisor shall train at least one (1) child care facility riding staff member in the supervision of children in the horseback riding program for every ten (10) or fewer children participating in the riding program.

C. Child care facility riding staff shall be trained by the horseback riding supervisor in emergency procedures appropriate to the horseback riding activity.

D. At least two (2) trained riding child care facility staff members, one (1) of whom holds a current American Red Cross standard First Aid and safety certificate or equivalent, shall accompany each trail excursion. If the horseback ride is more than one (1) hour from emergency medical services, at least one (1) staff member shall be trained in wilderness first aid training. If the horseback ride is for seven (7) or more nights and is more than one (1) hour away from emergency medical services, there must be at least one (1) staff member with each group of children with wilderness first responder training, CPR, and medication administration training. If more than twenty (20) children participate in the trail excursion, there shall be a trained riding child care facility staff member assigned for each additional ten (10) or fewer riders.

E. First Aid supplies shall be carried on each trail excursion and available at each horseback riding ring/arena.

F. No person is allowed in the riding area unless the horseback riding supervisor or a trained riding child care facility staff member is present.

G. The riding supervisor shall determine the child's riding experience and level of skill and must take these into account in assigning which horse each child should ride and determining the type of riding activity in which each child should engage. Children shall be given instruction in basic safety, which shall include at least the following: riding rules in the ring and on the trail, how to approach, and mount and dismount.

H. Children shall be appropriately dressed for riding, which shall include shoes or boots and long pants. The riding supervisor must evaluate the footgear of each child and make the stirrups safe for each child's shoe or boot.

I. Protective head gear/helmets are mandatory for children ring riding and on trail rides.

J. Parents must be notified in advance of what type of protective gear is used by the child care facility. If children bring helmets from home, they must be specifically designed for equestrian use, worn correctly, and in good condition.

K. The horseback riding equipment shall be in good condition, properly sized and adjusted for each rider.

L. The horse barn or stable, ring, and commonly used trail(s) shall be in good repair and free of dangerous obstructions.

M. Horses shall be cared for with evidence of an adequate feeding schedule and a means to care for sick horses.

N. Horses shall not be permitted in the other designated activity areas.

TRAMPOLINE

2.612 TRAMPOLINE ACTIVITIES

A. The trampoline supervisor shall have documented formal training and experience in use of trampoline and knowledge of safety and spotting techniques.

B. Trampolines shall be equipped with pads along the sides and shall be kept in good repair.

C. No person shall be on the trampoline unless a trampoline supervisor is present and spotters are present on all four (4) sides of the trampoline.

D. Trampolines shall be secured from unauthorized use by any person.

E. The child shall dismount the trampoline by sitting on the edge and sliding off. No child shall jump off the trampoline.

F. Spotters shall be posted on four (4) sides of each trampoline at all times. Spotters shall not stand, sit, or lie on trampoline, but shall stand in a position of readiness, watching the jumper at all times.

CLIMBING

2.613 ROCK CLIMBING AND ROPES COURSES

A. When a child care facility offers basic/single-pitch rock climbing or advanced/multi-pitched climbing, which includes such topics as the care and use of basic equipment, knots, anchors and belays, verbal signals, safely measures, basic climbing holds and moves, and techniques of rappelling, the following rules must be complied with:

1. The climbing supervisor shall:

   a. Be at least eighteen (18) years old;

   b. Have certification or documented experience in knots, anchors, safety zones, verbal signals, belaying, rappelling, and safe tie-ins, or training or experience from a recognized organization, such as the Association for Challenge Course Technology or certifying body for the type of activities offered; and

   c. Have at least six (6) weeks experience in a management or supervisory capacity in similar types of programs.

2. A climbing instructor shall have verified knowledge of technical climbing by completion of a course or climbing school, or a minimum of ten (10) hours of instruction.

3. At least two (2) climbing instructors must be present at the climbing site at all times.

4. There shall be one (1) climbing instructor for each six (6) climbers or two climbing instructors for thirteen (13) children.

5. There shall be a staff member who holds at least a current Red Cross standard First Aid and safety certificate or equivalent at the rock climbing site.

6. First Aid supplies, put together by a person knowledgeable in First Aid supplies needed for climbing activities and possible injuries, shall be present at the climbing site.

7. No child shall be forced to participate in this activity.

8. The climbing supervisor shall be responsible for the proper maintenance of all equipment used. Equipment shall be checked by the supervisor immediately prior to use.

9. All rock climbing equipment shall be maintained, visually and physically inspected, and replaced on a timely basis.

10. Climbers must wear helmets at all times when in designated helmet zones.

11. The child care facility shall not permit an unsupervised climb.

12. The climbing supervisor must have knowledge of where the climb is to occur and must give approval on the day of the climb for the climb to occur.

13. Each rock climber must be visually supervised.

14. Children waiting to climb must be supervised by a staff member.

15. All climbers and rappellers shall be belayed in a top rope manner by a belayer that:

a. has been instructed in proper procedures, and directly supervised until competency has been demonstrated;

b. Has certification or documented experience in knots, anchors, safety zones, verbal signals, belaying, rappelling, and safe tie-ins, or training or experience from a recognized organization, such as the Association for Challenge Course Technology or certifying body for the type of activities offered; and

c. Has at least six (6) weeks experience in a management or supervisory capacity in similar types of programs.

2.614 ADVANCE/ MULTI-PITCHED CLIMBING

A. If the child care facility offers advanced/multi-pitched climbing, the following rules shall also be complied with:

1. The climbing supervisor accompanying participants shall:

a. Hold a current Red Cross standard First Aid and safety certificate or equivalent, and a current certificate for cardiopulmonary resuscitation;

b. Have been an instructor, under supervision, for two (2) seasons with verifiable experience and a review of any serious accidents;

c. Have completed a technical climbing school or training in technical climbing with evidence by letter of such completion;

d. Have led ten additional multi-pitched Class V climbs (the classification of the climbs as defined by the American Alpine Club) within the last two (2) years; and

e. Have knowledge of mountain rescue techniques. If the climb is more than sixty (60) minutes from emergency medical services, the climbing supervisor must hold a current wilderness First Aid training certificate or equivalent.

2. The climbing instructor or the rope leader shall have:

a. The same training as the climbing supervisor;

b. Have been an instructor, under supervision, for one (1) season with verifiable experience and a review of any serious accidents;

c. Completed a technical climbing school or training in technical climbing;

d. Led five (5) additional multi- pitched climbs; and

e. Knowledge of mountain rescue techniques. No instructor shall take campers on a climb he/she has not completed previously.

3. No child will be the rope leader.

4. A child who is permitted to participate in the climb must be at least thirteen (13) years old. The climbing supervisor shall assess the ability of the child as to the difficulty of the climb.

5. The climbing instructor and climbing site must be approved by the climbing supervisor for each climb.

6. The climbing supervisor, an equally qualified person, or two (2) equally qualified rope leaders shall be present at the climb site.

7. There shall be one rope leader that is at least eighteen (18) years of age to each three climbers in an extended climb.

8. First Aid equipment must be carried with the staff on each climb.

2.615 HIGH AND OR LOW ROPES COURSES OR CLIMBING WALLS

A. If the child care facility offers high and/or low ropes courses or a climbing wall, the following rules must be complied with at all times:

1. The rope supervisor must have training and experience on the type of rope course or climbing wall being used and must hold a current standard First Aid and safety certificate or, if the ropes course or climbing wall is more than sixty (60) minutes from definitive care, must hold a wilderness First Aid card.

2. The rope instructor must have training and experience on the type of rope course or climbing wall being used and must be supervised by the rope supervisor and must hold a current standard First Aid and safety certificate or, if the ropes course or climbing wall is more than sixty (60) minutes from definitive care, must hold a wilderness First Aid card.

3. Ropes courses must have written evidence of annual inspection by qualified Association of Challenge Course Technology (ACCT) personnel of course elements for integrity of all hardware, materials, and equipment.

4. Ropes courses must be inspected regularly before use by the rope supervisor or the rope instructor.

5. All equipment and elements of a rope course or climbing wall must be safety checked prior to each use and have written records of regular inspection and maintenance of all equipment and elements utilized.

6. Children must wear safety equipment appropriate to the size of the child and appropriate helmets when using the high ropes course or climbing wall.

7. At all times, there must be a rope supervisor or rope instructor on the ropes course with children.

8. Ropes courses and climbing walls must be off limits to children when a rope supervisor or rope instructor is not present.

9. Access to ropes courses and climbing walls must be controlled by education, signs, and whatever other means are necessary to control unsupervised access.

10. The child care facility must have written safety procedures for use of the ropes course(s) and climbing wall. Staff must be trained on the safety procedures.

HIKING, BACKPACKING, AND CAMPING

2.616 HIKING

If the child care facility offers hiking activities, the following rules shall be complied with:

A. The hiking supervisor must hold a current Red Cross standard First Aid and safety certificate or equivalent; shall have knowledge of outdoor experience and the symptoms and correct treatment procedures for hypothermia and dehydration; and, shall have verifiable experience in hiking and backpacking at the elevation where the hike is to take place.

B. The staff members involved in hiking shall be trained by the supervisor and shall continually observe and monitor campers on the trail for early diagnosis and treatment of injury or illness.

C. When a group takes a hike within sixty (60) minutes of definitive medical care, there must be at least one (1) staff member currently qualified with Red Cross standard First Aid and safety training certificate or equivalent, current CPR certificate, and current training in the Department required and approved medication administration training.

D. When a group takes a hiking or backpacking trip more than sixty (60) minutes away from definitive medical care, there must be at least one staff member with each group of children with current wilderness First Aid training, or equivalent, current CPR training, and current medication administration training.

E. At least two (2) staff members must accompany a group in hikes. From time to time, hiking groups may divide up as long as hikers are always with one staff member and staff members are in visual, verbal or electronic (radio or wireless communication) contact with each other.

F. In selecting the area for hiking, the hiking supervisor shall consider the hiker's age, physical condition and experience, as well as the season, weather trends, methods of evacuation, and communication.

G. Before participation, children must be instructed on:

1. The fundamental safety procedures to follow on the trail;

2. Procedures to follow if lost;

3. Proper health and sanitation procedures on the trail;

4. Rules governing land to be hiked;

5. Potential high-risk areas; and

6. Fire precautions.

H. Each hiker shall be equipped with protective clothing against natural elements such as rain, snow, wind, cold, sun, and insects.

I. First Aid supplies, put together by a person knowledgeable in First Aid supplies needed for possible accidents and/or injuries, shall be present on each hike. The contents of each kit shall be adequate for the number of children, the terrain, and the length of the hike.

J. An itinerary of the hiking trip and a list of all people on the hike must be kept at the child care facility.

K. The child care facility must have written safety procedures for hiking, including the written protocol for evacuating a child that becomes sick or injured on a hike. Staff and children must be trained on the safety procedures and protocol.

2.617 BACKPACKING AND CAMPING

A. The backpacking and camping supervisor shall have knowledge and verifiable experience in camping and/or backpacking at the elevation where the backpacking or camping will take place.

B. When a group is backpacking or camping within sixty (60) minutes of definitive medical care, there must be at least one staff member currently qualified with Red Cross standard First Aid training certificate or equivalent, current CPR training, and current training in the Department required and approved medication administration training.

C. When a group is backpacking or camping where children are more than sixty (60) minutes away from definitive medical care, there must be at least one (1) staff member with each group of children with current wilderness First Aid training or equivalent, current CPR training, and current medication administration training.

D. If a child will require medication administration while away from the child care facility while backpacking or camping, there must be at least one (1) staff member present with current medication administration training who has been delegated by a registered nurse to administer medication.

E. The staff members involved in backpacking or camping shall be trained by the supervisor and shall continually observe and monitor children on the trail for early diagnosis and treatment of injuries or illness.

F. The backpacking or camping supervisor shall consider the hiker's age, physical condition, and experience, as well as the season, weather trends, methods of evacuation and communication, and water quality and quantity in selecting the area for backpacking or camping.

G. Children shall have a safety orientation and be instructed on the applicable precautions, such as:

1. The fundamental safety procedures to follow on the trail;

2. Procedures for a hiker if he/she becomes lost;

3. Proper health procedures, including the need for drinking fluids and eating appropriate foods;

4. Sanitation procedures;

5. Relevant rules and regulations of the governing land where the camping or backpacking occurs;

6. Potential high-risk areas which may be found on the trail;

7. Fire danger precautions; flash floods; lightening dangers; and

8. Procedures when encountering wild animals.

H. Children shall be oriented to minimum impact guidelines and techniques.

I. Each child shall be equipped with protective clothing and equipment against anticipated natural elements such as rain, snow, wind, cold, sun, and insects.

J. Appropriate first aid supplies shall be present on each trip. The contents of each kit shall be adequate for the number of children, the terrain, and the length of the trip.

K. An itinerary of the trip with a list of participants must be available to parents, staff, local police jurisdictions and staff or contractors of the Department.

L. The child care facility must have written safety procedures for backpacking or camping, including the written protocol for evacuating a child that becomes sick or injured.

BIKING

2.618 BICYCLING ON PUBLIC ROADS OR MOUNTAIN TRAILS

If a child care facility has bicycling trips either on a public road or on mountain trails, the following rules shall be complied with:

A. The bicycling supervisor must be familiar with state laws about bicycling; be knowledgeable about the type of bicycling terrain where the bicycle trips will occur be knowledgeable about bicycling in the mountains, if applicable: shall know how to make simple bicycle repairs; and, shall hold at lest a current Red Cross standard First Aid and safety certificate or equivalent.

B. At least two (2) staff members must accompany a group while biking. From time to time, biking groups may divide up as long as bikers are always with one staff member and staff members are in visual, verbal or electronic (radio or wireless communication) contact with each other. A bicycling supervisor or staff member equally qualified and another qualified staff member must accompany each bicycle trip. Correct staff to child ratios must be complied with at all times. There must be one staff member at the beginning and end of each bicycle group.

C. Each bicycler shall wear head protection and the bicycle shall be equipped with brakes in good condition. Bicycles shall be in good condition, properly maintained, inspected prior to each bicycling trip, and adjusted to the size of the child riding the bicycle. For Children using their own bicycles the facility must notify parents or guardians a written statement will be required in advance, , attesting that the bicycle is in good condition, properly maintained, inspected, and adjusted to the size of the child riding the bicycle.

D. An appropriate bicycle repair kit and First Aid equipment must be taken on each trip. The First Aid supplies must be put together by a person knowledgeable in First Aid supplies needed for bike trips and possible accidents and/or injuries.

E. The bicycling supervisor must instruct children as to emergency procedures, safe riding practices, and road and trail etiquette.

F. The bicycling supervisor shall evaluate each child as to their physical capability to participate in the planned bicycling trip, keeping in mind the trip length, terrain, altitude of the trip, and weather conditions.

G. Water/fluids must be taken on each bicycle trip.

H. An itinerary of the biking trip and a list of all people on the biking trip must be kept at the child care facility.

I. The child care facility must have written safety procedures of bike trips, including the written protocol for evacuating a child that becomes sick or injured on a bike trip. Staff and children must be trained on the safety procedures and protocol.

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2.800 RULES REGULATING SUBSTITUTE PLACEMENT AGENCIES

2.801 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 through 24-4-204 (the "APA"), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101 through 26.5-1-103 (the "Early Childhood Act"), C.R.S., the Child Care Licensing Act, sections 26.5-5-301 through 26.5-5-329,, C.R.S.; and the Child Care Development and Block Grant Act of 2014, and 42 U.S.C. sec. 9858e.

The specific rulemaking authorities granted for substitute placement agencies include sections 26.5-1-105(1), 26.5-5-306, and 26.5-5-314(1) and (2), C.R.S.

2.802 SCOPE AND PURPOSE

The Colorado Department of Early Childhood, Division of Early Learning, Licensing, and Administration is responsible for the administration of health and safety rules and requirements for licensed child care facilities. These rules and regulations shall govern the processes and procedures to become a licensed substitute placement agency in Colorado. These rules also address the operations of Substitute Placement Agencies that place a substitute child care provider into a licensed child care facility for the purpose of providing substitute child care. All substitute placement agencies must comply with the "General Rules for Child Care Facilities" in rule section 2.100; and these "Rules Regulating Substitute Placement Agencies," rule section 2.800.

2.803 APPLICABILITY

The provisions of these rules and regulations shall be applicable to licensed substitute placement agencies (agencies) that place or that facilitates or arrange placement of short-term or long-term substitute child care providers in licensed child care facilities.

2.804 DEFINITIONS

A. "Arrange for placement" means to act as an intermediary by assisting a child care facility in the placement of a substitute child care provider.

B. "Background checks" means a set of required records that are obtained and analyzed to determine whether the history of a prospective substitute child care employee meets legal and safety criteria when considering the placement of the individual in a less than twenty-four (24) hour child care facility.

C. "Child care center" has the same meaning as set forth in section 26.5-5-303(3)

D. "Employee," for purposes of this section, means any individual who is employed by or contracted through the agency.

E. "Emergency child care center substitute" means a substitute who works in place of a regular staff member in a child care facility who is unable to work their normally scheduled work hours due to an unexpected event such as an absence of a staff member or personal emergency event. The purpose of the emergency substitute is to provide coverage for a staff member for no more than three (3) calendar days.

F. "Emergency family child care home substitute" means a substitute who works in place of a family child care home provider who is unable to work their normally scheduled work hours due to an unexpected event such as an illness or personal emergency event. The purpose of the emergency substitute is to provide coverage for a family child care home provider until parents are able to pick up the children in care.

G. "Equally qualified" means that the employee or substitute provider has the same required training and qualifications as the primary provider as specified in the rules regulating family child care homes; rules regulating child care centers or rules regulating school age child care.

H. "Family child care home" means a child care facility located within a residence of a primary provider.

I. "Licensing" means the process by which the Colorado Department of Early Childhood approves a facility or agency for the purpose of conducting business as a child care facility.

J. "Long term child care center substitute" means a substitute who works in place of a regular staff member who is unable to work their normally scheduled work hours due to a planned or unplanned event that requires the regular staff member be on leave for more than two (2) calendar weeks.

K. "Long term family child care home substitute" means a substitute who works in place of a regular family child care home provider who is unable to work their normally scheduled work hours due to a planned or unplanned event that requires the regular family child care home provider to be on leave for more than two (2) calendar weeks.

L. "Negative licensing action" has the same meaning as set forth in section 26.5-5-303(16)(a), C.R.S..

M. "Short term child care center substitute" means a substitute who works in place of a regular staff member who is unable to work their normally scheduled work hours due to a planned or unplanned event that requires the regular staff member be on leave for more than three (3) days and less than two (2) calendar weeks.

N. "Short term family child care home substitute" means a substitute who works in place of a regular family child care home who is unable to work their normally scheduled work hours due to a planned or unplanned event that requires the regular family child care home to be on leave for more than three (3) days and less than two (2) calendar weeks.

O. "Substitute child care provider," as defined in section 26.5-5-303(27), C.R.S., means a person who provides temporary care for a child or children in a licensed child care facility, including a child care center and a family child care home.

P. "Substitute placement agency," (Agency) has the same meaning as set forth in section 26.5-5-303(28), C.R.S.,.

Q. "Substitute placement," means to coordinate, arrange, and approve the process of an adult substitute child care provider entering an unrelated family child care home or child care facility to provide substitute child care services on an emergency, temporary/short term or long-term assignment. Substitutes may be employees or contract employees of the agency.

2.805 GOVERNING BODY

The governing body must be identified by its legal name. The names and addresses of individuals who hold primary financial control and officers of the governing body must be disclosed fully to the Colorado Department of Early Childhood. The governing body is responsible for providing adequate financing, qualified personnel, services, and program functions for the safety and well-being of children in accordance with these rules. When changes of governing body occur, the new governing body must immediately submit an original application and pay the required fee before a new license can be issued.

A. A substitute placement agency, herein also referred to as the “the Agency” may not be operated without a license, as required by law, to be issued by the Department in conformity with all rules and regulations.

B. The substitute placement agency must:

1. Maintain the written purpose and policies for the general operation and management of the agency, including the placement of substitutes. When such purpose and policies are reviewed and revised, the Department must be advised of such changes. The purpose and policies at a minimum must include:

    a. The types of child care facilities in which substitutes will be placed, including the ages of children served at the child care facility where substitutes will be placed and the geographic area(s) the agency expects to serve;

    b. The responsibilities for child care facilities utilizing the substitute placement agency;

    c. Itemized fee schedule, including client set up fees, if applicable;

    d. Refund policy;

    e. Cancellation policy;

    f. Mileage/travel policy;

    g. Minimum scheduled time policy;

    h. Services and types of substitutes available to the community; and

    i. The responsibilities of the agency and the child care facility for reporting suspected child abuse or neglect.

2. The substitute placement agency must obtain a fully executed and signed contract with the child care facility prior to placing substitutes in the child care facility.

3. The substitute placement agency must develop and implement personnel policies including, but not limited to:

    a. Job descriptions for Substitute child care providers;

    b. Qualifications for the position in accordance with current licensing standards;

    c. The duties and responsibilities of substitutes;

    d. The responsibilities of the substitute within a child care facility;

    e. The proper supervision of children;

    f. Proper guidance techniques;

    g. Proper name to face attendance and transitions;

    h. The identification and symptoms of suspected child abuse or neglect; and

i. The reporting of suspected child abuse, including the statewide child abuse reporting hotline.

4. Substitutes must be informed of their duties at the time of employment or acceptance of a contract with the agency, and before being placed in a child care facility.

5. Inform the Department, in writing, of:

a. A change in the executive director or the main contact of the agency within ten (10) calendar days.

b. The hours of operation the agency office is open and available for inspection of agency records.

6. Notify the Department, in writing, within twenty-four (24) hours, anytime a substitute is the subject of a child protection investigation arising out of actions or events that occurred while placed at a child care facility; a substitute was the staff member in charge of a classroom and a child received an injury requiring emergency medical treatment; a substitute is responsible for a safe sleep violation or a substitute has been terminated as a result of their actions while placed at a child care facility.

7. Document and report within twenty-four (24) hours, in writing, to the Colorado Department of Early Childhood when the substitute from the agency is the staff member responsible for the child(ren) in a child care facility and the child receives an injury resulting in medical care or treatment, any accident or illness occurring at a child care facility that resulted in medical care or treatment by a health care provider, hospitalization, or death.

8. Carry public liability insurance. The applicant or licensee must submit the amount of the insurance and the name and the address of the insurance agency providing the insurance to the agency. Documentation of current liability insurance must be on file and available for review at all times at the agency.

9. Complete the licensing renewal requirements by:

a. Submitting the license continuation notice and fee prior to the annual due date of the continuation notice;

b. Paying the prescribed application or continuation fee pursuant to rule section 2.111 of the General Rules for Child Care Facilities;

c. Cooperating with on-site monitoring inspections and investigations to assess the agency's compliance with the rules for substitute placement agencies.

PERSONNEL

2.806 GENERAL REQUIREMENTS FOR ALL SUBSTITUTES

A. There must be a dated letter of agreement with each substitute which includes the specific job responsibilities/job description. The letter of agreement must be executed upon hire by both the agency and the substitute. Prior to being placed at a child care facility, substitutes must sign a statement indicating that they have read and understand the agency policies and procedures. All substitutes must be notified of changes to policies and procedures.

B. All substitutes must be eighteen (18) years or older and qualified for the position which they will be providing substitute care.

C. All substitutes must be registered in the professional development information system.

D. All substitutes must have completed all the pre-service training courses listed in rule section 2.807(A)(4), prior to being placed at a child care facility.

E. All substitutes must complete the Department-approved playground safety training prior to working with children and annually.

F. All substitutes must complete the Department-approved injury prevention training prior to working with children and annually.

G. The personnel file of each substitute must contain clearance or arrest report from the Colorado Bureau of Investigation resulting from the staff member's criminal record check in accordance with rule section 2.121 of the General Rules for Child Care Facilities.

H. The personnel file of each substitute must contain the results of the Department's automated child abuse and neglect system. In accordance with rule section 2.120 of the General Rules for Child Care Facilities.

I. Substitutes must be current for all immunizations routinely recommended for adults by their health care provider.

J. All staff must have at least one (1) hour of child development training within ninety (90) days of employment. This training must include the major domains (cognitive, social, emotional, physical development and approaches to learning). This training is required once, and will count toward ongoing training requirements if taken after the date of hire.

2.807 PERSONNEL POLICIES, ORIENTATION AND STAFF DEVELOPMENT

A. A written statement of personnel policy shall be provided to each substitute or qualified applicant. This statement shall, at a minimum, contain the following information:

1. A job description which outlines the duties, responsibilities, qualifications; and educational requirements for the position.

2. A procedure for tracking the placement hours, including the name of the facility, the license number, facility address and ages of children where the substitute is placed.

3. Prior to working with children, each substitute must read and be instructed about the policies and procedures of the Agency, including those related to proper supervision of children, identification and symptoms of suspected child abuse or neglect, the reporting of suspected child abuse. Substitutes must sign a statement indicating that they have read and understand the Agency's policies and procedures.

4. A written pre-service training plan for each substitute. Each substitute must complete the following training before being placed in a child care facility:

a. Each substitute working with infants less than twelve (12) months old must complete a Department-approved safe sleep training prior to working with infants less than twelve (12) months old. This training must be renewed annually and may be counted towards ongoing training requirements.

b. Each substitute working with children less than three (3) years of age must complete a Department-approved prevention of shaken baby/abusive head trauma training prior to working with children less than three (3) years of age. This training must be renewed annually and counts towards ongoing training requirements.

c. Each substitute must complete a Department-approved standard precautions training that meets current occupational safety and health administration (OSHA) requirements prior to working with children. This training must be renewed annually and counts towards ongoing training requirements.

d. Prior to working with children and annually each substitute must be trained using Department-approved training about child abuse prevention, including common symptoms and signs of child abuse.

e. Prior to working with children and annually each substitute must be trained using a Department-approved training on how to report, where to report and when to report suspected or known child abuse or neglect.

f. The agency must ensure that each substitute is familiar with the licensing rules governing the specific child care license type in which the substitute will be placed within thirty (30) calendar days of employment at the substitute placement agency.

g. The Agency must ensure that each substitute is familiar with the rules and regulations governing the health and sanitation of child care facilities in the state of Colorado if placed in a facility that these rules apply within thirty (30) calendar days of employment at the substitute placement agency.

h. Each substitute must have current Department-approved First Aid and Cardiopulmonary Resuscitation (CPR) certification before working in a classroom alone.

i. Each substitute must complete a minimum of fifteen (15) clock hours of training each year beginning with the start date of the employee. At least three (3) clock hours per year must be in the focus of social emotional development.

j. Ongoing training and courses shall demonstrate a direct connection to one or more of the following competency areas:

1) Child growth and development, and learning or courses that align with the competency domains of child growth and development;

2) Child observation and assessment;

3) Family and community partnership;

4) Guidance;

5) Health, safety and nutrition;

6) Professional development and leadership;

7) Program planning and development; or

8) Teaching practices

k. Each one (1) semester credit hour course with a direct connection to the competency area listed in rule section 2.807(A)(4)(j), taken at a regionally accredited college or university shall count as fifteen (15) clock hours of ongoing training.

l. Training hours completed can only be counted during the year taken and cannot be carried over.

m. To be counted for ongoing training, the training certificate must have documentation that includes:

1) The title of the training;

2) The competency domain;

3) The date and clock hours of the training;

4) The name or signature, or other approved method of verifying the identity of trainer or entity;

5) Expiration of training if applicable; and

6) Connection to social emotional focus if applicable.

5. The substitute must have a complete file maintained at the substitute placement agency and have a portable file available for review at all times to both licensing and the child care facility where the substitute is providing substitute care. Documentation of qualifications for the position includes:

a. Certificate verifying all pre-service training, including name, phone number, and license number of agency;

b. Department issued director letter; or

c. Department issued early childhood teacher letter; or

d. Official college transcript and letters of experience; or

e. Credential 2.0 level 3 or higher; and

f. First aid and CPR certificates; and

g. Complete background check; and

h. Emergency contact name, address and phone number.

6. Substitutes must not consume or be under the influence of any substance that impairs their ability to care for children while caring for children.

7. Illegal drugs, drug paraphernalia, marijuana and marijuana infused products, and alcohol must never be present on the premises of the facility.

8. Substitutes must maintain the confidentiality of the children, families and the child care facility where the substitute is placed.

9. Substitutes are responsible for documenting experience hours with the specific ages of children cared for, while providing substitute child care for the purpose of employment verification with the agency.

10. Substitutes must not take personal photos of children, or make reference to any personal information of children, families or other child care facilities, including staff, on social media, email, text messages or other means of communication, written or verbal.

11. When caring for children, substitutes must refrain from personal use of electronics including, but not limited to, cell phones and portable electronic devices.

12. Substitutes must sign in and out of every facility each time they work at a child care facility.

2.808 CHILD CARE CENTER SUBSTITUTE QUALIFICATIONS

A. Must meet requirements found in rule sections 2.806 and 2.807; and

B. Must meet the current minimum education and experience requirements for the position in which the substitute is providing child care.

C. Large child care center director: the educational requirements for the director or substitute director of a large center must be met by satisfactory completion of one of the following. Official college transcripts must be submitted to the Department for evaluation of qualifications.

1. A Bachelor degree in Early Childhood Education from a regionally accredited Colorado college or university.

2. A current Early Childhood Professional Credential Level IV version 2.0 as determined by the Colorado Department of Education.

3. A Master's Degree with a major emphasis in Child Development, Early Childhood Education, Early Childhood Special Education.

4. Completion of all of the following three (3) semester hour courses from a regionally accredited college or university, at either a two year, four year or graduate level, in each of the following subject or content areas:

a. Introduction To Early Childhood Professions;

b. Introduction To Early Childhood Lab Techniques;

c. Early Childhood Guidance Strategies For Children;

d. Early Childhood Health, Nutrition, And Safety;

e. Administration Of Early Childhood Care And Education Programs;

f. Administration: Human Relations For Early Childhood Professions or Introduction To Business; Early Childhood Curriculum Development;

g. Early Childhood Growth and Development;

h. The Exceptional Child; and

i. Infant/Toddler Theory and Practice; or the Department approved Expanding Quality Infant/Toddler training;

5. Completion of a course of training approved by the Department that includes course content listed at rule section 2.807(A)(4), and documented experience.

6. Department approved alternative pathway or credential.

7. The experience requirements for the director of a large center must be met by completion of the following amount of work experience in a child development program, which includes working with a group of children in such programs as a preschool, child care center, kindergarten, or Head Start program:

a. Persons with Bachelor's or Master's degree with a major emphasis in Child Development, Early Childhood Education, Early Childhood Special Education, or an Early Childhood Professional Credential Level IV version 2.0 as determined by the Colorado Department of Education; no additional experience is required.

b. Persons with a 2-year college degree in Early Childhood Education must have twelve (12) months (1,820 hours) of verified experience working directly with children in a child development program.

c. Persons with a Bachelor's degree and completion of courses specified in rule section 2.214(B)(1) of the Rules Regulating Child Care Centers, and must have twelve (12) months (1,820 hours) of verified experience working directly with children in a child development program.

d. Persons who have no degree but have completed the thirty (30) semester hours specified in rule section 2.214(B)(2) in the Rules Regulating Child Care Centers, must have twenty-four (24) months (3,640 hours) of verified experience working directly with children in a child development program.

e. Verified experience acquired in a licensed Colorado Family Child Care Home or School-Age Child Care Center may count for up to half of the required experience for director qualifications. To have Colorado Family Child Care Home experience considered, the applicant must be or have been the licensee. The other half of the required experience must be working directly with children in a child development program;

f. Experience with five (5) year olds must be verified as follows:

i. If experience caring for five (5) year old children occurs in a child care center classroom, the hours worked shall be counted as preschool experience; or

ii. If experience caring for five (5) year old children occurs in an elementary school program, the hours worked shall be counted as school-age experience.

D. The small center director qualifications must be met by satisfactory completion of:

1. A current professional teaching license issued by the Colorado Department of Education with an endorsement in the area of Early Childhood Education or Early Childhood Special Education;

2. A current Early Childhood Professional Credential Level III version 2.0 as determined by the Colorado Department of Education;

3. Three (3) years' satisfactory experience in the group care of children less than six (6) years of age (5,460 hours) and at least two (2) 3-semester hours from a regionally accredited college or university, at either a two-year, four-year, or graduate level, in each of the following subject or content areas in early childhood education; one of the courses must be either Introduction to Early Childhood Education or Guidance Strategies;

4. Two (2) years' college education (sixty semester hours) at a regionally accredited college or university, at either a two-year, four-year, or graduate level, in each of the following subject or content areas with at least two (2) 3-semester-hour courses in early childhood education; one (1) of which must be either Introduction to Early Childhood Education or Guidance Strategies; and one (1) year (1,820 hours) of satisfactory experience in the group care of children less than six (6) years of age;

5. Current certification as a Child Development Associate (CDA) or other Department approved credential;

6. A two (2) year college degree in Child Development Or Early Childhood Education from a regionally accredited college or university, at either a two-year, four year or graduate level, in each of the following subject or content areas that must include at least one (1) 3- semester hour course in either Introduction to Early Childhood Education or Guidance Strategies and six (6) months (910 hours) satisfactory experience in the group care of children less than six (6) years of age; and

7. Department approved alternative pathway or credential.

E. The Early Childhood Teacher qualification must be met by satisfactory completion of:

1. A Bachelor's degree from a regionally accredited college or university with a major area of study in one of the following areas:

   a. Early Childhood Education;

   b. Elementary Education;

   c. Special Education;

   d. Family And Child Development; or

   e. Child Psychology.

2. A Bachelor’s degree from a regionally accredited college or university with a major area of study in any area other than those listed in rule section 2.808(C)(4), and additional two (2) three-semester hour early childhood education college courses with one course being either Introduction to Early Childhood Education or Guidance Strategies:

   a. Current Early Childhood Professional Credential Level III version 2.0 as determined by the Colorado Department of Education;

b. A 2-year college degree, sixty (60) semester hours, in early childhood education from a regionally accredited college or university, which must include at least two (2) three-semester hour courses, one of which must be either Introduction to Early Childhood Education or Guidance Strategies; and at least six (6) months (910 hours) of satisfactory experience;

c. Completion of twelve (12) semester hours from a regionally accredited college or university, at either a two-year, four-year, or graduate level, in each of the following subject or content areas in early childhood education and one of the three (3) semester hour courses must be either Introduction to Early Childhood Education or Guidance Strategies, plus nine (9) months (1,395 hours) of verified experience in the care and supervision of four (4) or more children less than six (6) years of age who are not related to the individual;

d. Completion of a vocational or occupational education sequence in Child Growth and Development plus twelve (12) months (1,820 hours) of verified experience in the care and supervision of four (4) or more children less than six (6) years of age who are not related to the individual;

e. Current certification as a Child Development Associate (CDA) or other Department-approved credential;

f. Completion of a course of training approved by the Department that includes training and work experience with children in a child growth and development program plus twelve (12) months (1,820 hours) of verified experience in the care and supervision of four (4) or more children less than six (6) years of age who are not related to the individual;

g. Twenty-four (24) months (3,640 hours) of verified experience in the care and supervision of four (4) or more children less than six (6) years of age who are not related to the individual. Satisfactory experience includes being a licensee of a Colorado family child care home; a teacher's aide or teacher in a child care center, preschool, or elementary school, plus either:

(1) A current Colorado level I credential; or

(2) Two (2) three-semester hour Early Childhood Education college courses from a regionally accredited college or university, at either a two-year, four-year, or graduate level, in each of the following subject or content areas with one course being either Introduction to Early Childhood Education or Guidance Strategies.

j. Department approved alternative pathway or credential.

3. All college course grades toward Early Childhood Teacher qualifications must be "C" or better.

F. The assistant early childhood teacher qualification must be met by satisfactory completion of:

1. Completion of one of the Early Childhood Education courses listed in rule section 2.216(A)(1) of the Rules Regulating Child Care Centers, with a course grade of "C" or better and twelve (12) months (1,820 hours) verified experience in the care and supervision of four (4) or more children less than six (6) years of age, who are not related to the individual. Satisfactory experience includes being a licensee of a Family Child Care Home; a teacher's aide in a center, preschool or elementary school. Assistant Early

Childhood Teachers must be enrolled in and attending the second (2nd) Early Childhood Education class which will be used as the basis for their qualification for the position of Early Childhood Teacher;

2. Persons having completed two (2) of the Early Childhood Education classes referenced in rule section 2.216(A)(1) of the Rules Regulating Child Care Centers, with a course grade of "C" or better and no experience; or

3. A current Early Childhood Professional Credential level I version 1.0 or 2.0 as determined by the Colorado Department of Education.

G. The Staff Aide qualification must be met by satisfactory completion of:

1. Staff Aides must be at least sixteen (16) years of age and must work directly under the supervision of the Director or an Early Childhood Teacher.

2. Infant Staff Aides must be at least eighteen (18) years of age.

3. Staff Aides, without supervision from an Early Childhood Teacher or Director, may supervise no more than two (2) preschool age children while assisting the children with diapering or toileting.

H. The Kindergarten teacher qualifications must be met by satisfactory completion of:

1. Each teacher of a kindergarten class must have the same qualifications as a director for a large center (see rule section 2.216(D) of the Rules Regulating Child Care Centers), be state certified or licensed as an elementary teacher by the Colorado Department of Education, or have a four (4) year degree from a regionally accredited college or university in Elementary or Early Childhood Education.

2. A current Early Childhood Professional credential level iii version 2.0 as determined by the Colorado Department of Education.

I. The Infant Program Supervisor qualifications must be met by satisfactory completion of:

1. A Registered Nurse, with an active license from the Colorado State Board of Nurings, with a minimum of six (6) months of experience in the care of infants.

2. A Licensed Practical Nurse, with an active license from the Colorado State Board of Nursing, with twelve (12) months of experience in the care of infants.

3. An adult who holds a certificate in Infant and Toddler Care from a regionally accredited college or university with completion of a minimum of thirty (30) semester hours in the development and care of infants and toddlers in a group setting.

4. An adult who is currently certified as a Child Development Associate (CDA) and has completed the Department approved Expanding Quality in Infant and Toddler Development Course of training.

5. An adult who:

a. Holds a current Early Childhood Professional credential level III version 2.0, as determined by the Colorado Department of Education;

b. Has completed one three-semester-hour class in infant/toddler development; or

c. Has completed the Department-approved "Expanding Quality in Infant and Toddler Development" and holds twelve months of verifiable full-day experience working with infants and/or toddlers.

6. An adult who:

   a. Is at least nineteen (19) years of age,

   b. Is qualified as an Early Childhood Teacher,

   c. Has a minimum of twelve (12) months of verifiable full-day experience in the group care of infants or toddlers; and

   d. Has completed at least two (2) three (3)-semester hour college courses from a regionally accredited college or university on the development and care of infants and toddlers in a group setting, one (1) of which must be infant/toddler development or the Department approved Expanding Quality in Infant and Toddler Development course of training.

7. The Infant Program Early Childhood Teacher qualifications must be met by satisfactory completion of:

   a. Eight (8) hours of orientation in the infant program from the Infant Program Supervisor including, but not limited to, the following topics: toys and equipment, appropriate activities for infants and toddlers, appropriate sleep positions for infants and toddlers, the safe and appropriate diaper change technique;

   b. At least six (6) months of experience in the care of infants or toddlers; and

   c. Meet qualifications for an Early Childhood Teacher found in rule section 2.216(A) of the Rules Regulating Child Care Centers, or be qualified as an infant program supervisor.

8. The Infant Program Staff Aide must be at least eighteen (18) years of age, must have completed eight (8) hours of orientation as listed above, at the infant program and must work under the direct supervision of an Infant Early Childhood Teacher.

9. Substitutes for infant program staff must hold a current Department-approved first aid and safety certificate that includes Cardiopulmonary Resuscitation (CPR) for all ages of children.

10. The toddler program Early Childhood Teacher qualifications must be met by satisfactory completion of:

    a. A Registered Nurse, with an active license from the Colorado State Board of Nursing, with a minimum of six (6) months of experience in the care of infants and/or toddlers;

    b. An adult who holds a certificate in Infant and Toddler Care from a regionally accredited college or university with completion of at least thirty (30) semester hours or equivalent in such courses as Child Growth and Development, Nutrition, and Care Practices with children birth to three (3) years of age;

    c. An adult who is certified as a Child Development Associate (CDA) or certified Child Care Professional (CCP) or holds another Department-approved certificate;

d. A Licensed Practical Nurse with at least twelve (12) months of verifiable experience in the care of children less than three (3) years of age;

e. An adult who meets the education and experience requirements for Early Childhood Teacher of a large center pursuant to rule section 2.216(A) of the Rules Regulating Child Care Centers); or

f. A current Early Childhood Professional Credential level II version 1.0 or level III version 2.0 as determined by the Colorado Department of Education.

J. The Toddler Program Staff Aide must be at least sixteen (16) years of age, must work directly under the supervision of the director or a toddler Early Childhood Teacher, and must have completed eight (8) hours of orientation at the toddler program.

1. Substitutes for toddler program staff must hold a current Department-approved first aid and safety certificate that includes CPR for all ages of children.

2. Substitutes placed in an infant and toddler program affiliated with a teen parent programs that are operated by accredited public-school systems on school premises must meet the following staff requirements by:

a. Director qualifications may be met by a certified teacher with a major in Home Economics Education or a vocationally credentialed teacher in Consumer and Homemaking or Early Childhood Occupations. The Director must complete at least three (3) semester hours in administration of a child care center.

b. The Director must be present in the infant program classroom or adjacent teen parent classroom at least sixty percent (60%) of any day the center is open.

c. If the Director cannot be present sixty percent (60%) of any day, an individual who meets director qualifications must substitute for the Director.

d. Infant Staff Aides must be at least fifteen (15) years of age and may be parents-to-be, parents of enrolled infants, or students enrolled in a child care related course with the sponsoring school system.

e. Substitutes for infant program staff must be from the sponsoring school system's list of approved substitute staff members. Substitutes who do not meet minimum staff qualifications can work no more than ten (10) consecutive business days per assignment.

f. Substitutes for infant program staff must hold a current Department-approved first aid and safety certificate that includes CPR for all ages of children.

2.809 FAMILY CHILD CARE HOME SUBSTITUTE QUALIFICATIONS

A. When in a Regular Family Child Care Home, the substitute must:

1. Must meet requirements found in rule sections 2.806 and 2.807;

2. Be familiar with the Rules Regulating Family Child Care Homes;

3. Be familiar with the home and provider's policies and procedures;

4. Know the names, ages and any special needs or health concerns of the children; and

5. Know the location of emergency information.

B. When in an Infant/Toddler Family Child Care Homes, the substitute must:

1. Must meet requirements found in rule section 2.806 and 2.807;

2. Be familiar with the Rules Regulating Family Child Care Homes;

3. Be familiar with the home and provider's policies and procedures;

4. Know the names, ages and any special needs or health concerns of the children;

5. Know the location of emergency information; and

6. Must have completed one (1) year of supervised experience caring for children who are younger than three (3) years old. The experience may have been obtained as:

a. A Colorado licensed Family Child Care Home;

b. A military licensed child care home;

c. A provider, in a family foster home certified for children younger than three (3) years of age; or

d. An employee in a licensed child care center in an infant and/or toddler program.

C. The substitute for the large family child care home must be qualified by:

1. Must meet requirements found in rule sections 2.806 and 2.807;

2. A minimum of two (2) years of documented satisfactory experience in the group care of children under the age of six (6) years or as a licensed home provider in Colorado. Equal experience operating as an approved military child care home is accepted;

3. A minimum of two (2) years of college education from a regionally accredited college or university, with at least one (1) college course in Early Childhood Education, plus one (1) year of documented satisfactory experience in the group care of children as:

a. A licensed home provider in Colorado;

b. A military licensed child care home;

c. A Colorado certified family foster home; or

d. A staff member in a licensed child care center.

4. Current certification as a Child Development Associate (CDA);

5. Completion prior to licensing of the Department approved Expanding Quality Infant/Toddler course; and

a. A minimum of two (2) years of experience as a licensed child care provider holding a permanent license in Colorado immediately before becoming a licensee of a large child care home; or

b. A minimum of two (2) years of full-time experience in a licensed program. The group care shall have been with children who are under the age of six (6) years.

6. Substitutes working in place as the Large Family Child Care Home Staff Aides must be at least sixteen (16) years of age and must work directly under the supervision of the primary provider or a substitute who is equally qualified as a Large Family Child Care Home provider. If left alone with children, the staff aide substitute or assistant provider substitute must meet all same age and training requirements as the provider.

2.810 SCHOOL AGE CHILD CARE SUBSTITUTE QUALIFICATIONS

A. Substitute for School Age Child Care:

1. Must meet requirements found in rule sections 2.806 and 2.807;

B. Substitute Program Director

1. Must meet requirements of rule sections 2.806 and 2.807;

2. The Program Director substitute must be at least twenty-one (21) years of age. The substitute program director must have demonstrated to the Agency, prior to placement at a school age child care center, maturity of judgment, administrative ability and the skill to appropriately supervise and direct school-age children in an unstructured setting.

3. The Substitute Program Director must have verifiable education or training in work with school-age children in such areas as Recreation, Education, Scouting or 4-H; and the program director must have completed at least one of the following qualifications:

a. A four (4) year college degree with a major such as Recreation, Outdoor Education, Education with a Specialty in Art, Elementary or Early Childhood Education, or a subject in the Human Service Field;

b. Two years of college training and six (6) months (910 hours) of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience, since attaining the age of eighteen (18), in the care and supervision of four (4) or more children; or

c. Is qualified as a Large Child Care Center Director.

4. Three years (5,460 hours) of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience and one of the following qualifications:

a. Complete six semester hours, or nine quarter hours in course work from a regionally accredited college or university;

b. Forty (40) clock hours of training in course work applicable to school-age children and the Department-approved courses in Injury Prevention, and Playground Safety for School-Aged Child Care Centers within the first nine (9) months of employment; or

c. Satisfactory experience includes experience in the care and supervision of four or more children from the ages of four (4)-eighteen (18) years old, unrelated to the individual, since attaining the age of eighteen (18).

C. Substitute Program Leaders for School Age Child Care Centers

1. Must meet requirements found in rule sections 2.806 and 2.807;

2. Each Substitute Program Leader must be at least eighteen (18) years of age, demonstrate ability to work with children, and must meet the following qualifications:

   a. Complete the Department-approved course in Injury Prevention;

   b. Complete the Department-approved course in Playground Safety for School-Aged Child Care Centers. This requirement does not apply to day camps that do not regularly use a playground; and

   c. Must have at least three (3) months (460 hours) of full-time or equivalent part-time satisfactory and verifiable experience with school-age children.

D. Substitute Program Aides for School Age Child Care Centers

1. Must meet requirements found in rule sections 2.806 and 2.807;

2. Substitute Program Aides must be at least sixteen (16) years of age. Program Aides must work directly under the supervision of the Program Director or Program Leaders and must never be left alone with children.

3. Substitute Program Aides can be counted as staff in determining child care staff ratios.

RECORDS

2.811 STAFF RECORDS

A. The center office must maintain a record for each staff member that includes the following:

1. Documentation for any substitute employed by the agency to determine if the individual has ever been convicted of a disqualifying crime as found in rule section 2.121 of the General Rules for Child Care Facilities. The personnel file of each substitute of the center must contain clearance or arrest report from the Colorado Bureau of Investigation;

2. Documentation for any substitute employed by the Agency to determine if the individual has a confirmed report for child abuse or neglect reported to the Department's Automated System as found in rule section 2.120 of the General Rules for Child Care Facilities. The personnel file of each substitute must contain the results of the Department's Automated System.

3. Substitutes must be current for all immunizations routinely recommended for adults by their health care provider.

4. Prior to being placed in a child care facility, substitutes must submit to the Agency a medical statement, signed and dated by a licensed medical health care provider, verifying that they are in good mental, physical, and emotional health appropriate for the position for which they have been hired. This statement must be dated no more than six (6) months prior to employment or within thirty (30) calendar days after the date of employment. This statement must indicate when subsequent medical statements are required. Subsequent medical statements must be submitted as required in writing by a medical health care provider.

5. If, in the opinion of a Physician or Mental Health Professional, an employee's examination or test results indicate a physical, emotional, or mental condition that could

be hazardous to a child, other staff, or self, or that would prevent satisfactory performance of duties must not be assigned or returned to a position until the condition is cleared to the satisfaction of the examining medical health care provider.

6. Name, address, phone number and birthdate of the individual;

7. Verification of education, work experience, employment, training, and completion of first aid and Cardiopulmonary Resuscitation (CPR) courses;

8. Date of employment;

9. Record of placements including dates, number of hours worked, name, address and license number of the child care facility where the substitute was placed.

10. Names, addresses, and telephone numbers of persons to be notified in the event of an emergency.

11. Substitute records must be available, upon request, to authorized personnel of the Department or Department representatives.

12. The records of the substitute must be maintained by the substitute placement agency for at least three (3) years. The current files must be maintained at the Agency, the previous two (2) years may be stored at either the Agency or a central location. If requested, the records must be provided to the Department or Department representative.

B. The personnel file for each substitute must contain all required information before the substitute can be placed at a child care facility.

2.812 ADMINISTRATIVE RECORDS AND REPORTS

A. The following records must be on file at the Agency:

1. A list of current substitutes, and substitute placements;

2. Reports from contracted child care facilities where any incident reports occur;

3. Contracts with both substitutes and child care facilities; and

4. Within thirty (30) calendar days of the last day of employment, staff members must be provided a letter verifying their experience at the Agency. The letter must contain the Agency's address, phone number and license number, the employee's start and end date and the total number of hours worked with children. Hours worked with infants and toddlers must be documented separately from hours worked with other age groups. The letter must be signed by a director, owner or human resources agent of the Agency.

HEALTH AND SAFETY

2.813 CONTROL OF COMMUNICABLE ILLNESSES

A. When a substitute has worked in a child care facility where there has been an increase in or outbreak of communicable illness among staff, or children the substitute must immediately notify the Agency. Individuals' confidentiality must be maintained.

B. The substitute placement agency must have a written agreement with the child care facility which requires the child care facility to:

a. Notify the Agency of an increase of illness or outbreak at the time the placement will occur.

b. Notify the Agency of any substitute exposed to a communicable illness at a child care facility, and, the Agency must be notified within twenty-four (24) hours.

C. When the substitute placement agency has been notified that a substitute has been in a placement where the individual has been exposed to a communicable illness, the Agency and the substitute must consult with and comply with all Health Department requirements before being placed at another facility.

Editor's Notes

History

Rules in 8 CCR 1402-1 were re-adopted from 12 CCR 2509-8.

Rule sections 2.100-2.138 eff. December 30, 2023.

Rule sections 2.200-2.243 eff. December 30, 2023.

Rule sections 2.400-2.425 eff. December 30, 2023.

Rule sections 2.500-2.528 eff. December 30, 2023.

Rule sections 2.600-2.618 eff. December 30, 2023.

Rule sections 2.800-2.813 eff. December 30, 2023.

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Tracking number: 2023-00618

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

Child Care Program Licensing

on 10/27/2023

8 CCR 1402-1

CHILD CARE FACILITY LICENSING RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/13/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 13, 2023 13:25:53

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Early Childhood

Agency

Colorado Child Care Assistance Program

CCR number

8 CCR 1403-1

Rule title

8 CCR 1403-1 COLORADO CHILD CARE ASSISTANCE PROGRAM RULES AND REGULATIONS 1 - eff 12/15/2023

Effective date

12/15/2023

COLORADO DEPARTMENT OF EARLY CHILDHOOD

Colorado Child Care Assistance Program

COLORADO CHILD CARE ASSISTANCE PROGRAM RULES AND REGULATIONS

8 CCR 1403-1

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

3.100 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 through 24-4-204, (the "APA"), C.R.S., the Anna Jo Garcia Haynes Early Childhood Act, Title 26.5 of the C.R.S. (the "Early Childhood Act"), C.R.S., and the Colorado Child Care Assistance Program Act, sections 26.5-4-101 through 26.5-4-119, C.R.S.

3.101 SCOPE AND PURPOSE

These rules and regulations shall govern the processes and procedures of licensed child care providers participating in the Colorado Child Care Assistance Program (CCCAP). The purpose of CCCAP is to provide eligible households with access to high quality, affordable child care that supports healthy child development and school readiness while promoting household self-sufficiency and informed child care choices.

3.102 APPLICABILITY

The provisions of these rules and regulations shall be applicable to licensed child care providers participating in the Colorado Child Care Assistance Program, which is regulated by the Colorado Department of Early Childhood.

3.103 DEFINITIONS

A. "Accused individual" means:

1. An adult caretaker, teen parent, or child care provider who is being accused of committing fraud or a fraudulent criminal act; or

2. An adult caretaker or teen parent who is being accused of committing an Intentional Program Violation.

B. "Additional care needs" means a child who has a physical and/or mental disability and needs a higher level of care on an individualized basis than that of his/her peers at the same age; or, who is under court supervision, including a voluntary out-of-home placement prior to or subsequent to a petition review of the need for placement (PRNP), and who has additional care needs identified by an individual health care plan (IHCP), individual education plan (IEP), physician's/professional's statement, child welfare, or individualized family service plan (IFSP).

C. "Adult caretaker" means a person in the home who is financially contributing to the welfare of the child and is the parent, adoptive parent, step-parent, legal guardian, or person who is acting in "loco parentis" and has physical custody of the child during the period of time child care is being requested.

D. "Adverse action" means any action by the counties or their designee which adversely affects the adult caretaker or teen parent's eligibility for services, or the Child Care Provider's right to payment for services provided and authorized under the CCCAP.

E. "Affidavit" means a voluntary written declaration reflecting the personal knowledge of the declarant.

F. "Applicant" means the adult caretaker(s) or teen parent(s) who sign(s) the application form and/or the redetermination form.

G. "Application" is a Department-approved form that may include, but is not limited to:

1. An original Department-prescribed low-income child care application, which is the first application for the CCCAP filed by the adult caretaker(s) or teen parent; or

2. At the option of the county, any application for another public assistance program.

H. "Application date" means the date that the county receives the signed application.

I. "Application date for pre-eligibility determinations" means the date that the application is received from the Child Care Provider or Applicant by the county.

J. "Application process" means all of the following:

1. The Department-prescribed, signed low-income child care application form completed by the adult caretaker or teen parent, which includes appeal rights; or any application from another public assistance program. Counties with Head Start programs may accept the Head Start application in lieu of the Low-Income Child Care application for those children enrolled in the Head Start program;

2. The required verification supporting the information declared on the application form; and

3. As a county option, an orientation or interview for new applicants may be required. Counties shall ensure that, if the county chooses to incorporate an orientation or interview into their application process, the orientation or interview process is not burdensome to families by allowing a family to complete the process via phone or electronic tools or by offering extended office hours to hold the orientation or interview.

K. "Assets" include but are not limited to the following:

1. Liquid resources such as cash on hand, money in checking or savings accounts, saving certificates, stocks or bonds, lump sum payments as specified in rule section 3.111(H)(3).

2. Non-liquid resources such as any tangible property including, but not limited to, licensed and unlicensed automobiles and motorcycles; utility trailer; seasonal or recreational vehicles (such as any camper, motor home, boat, snowmobile, water skidoo, or airplane); and real property (such as buildings, land, and vacation homes). Primary home and automobile of the primary caretakers are excluded.

L. "Attestation of mental competence" means a signed statement from a Qualified Exempt Child Care Provider declaring that no one in the home where the care is provided has been determined to be insane or mentally incompetent by a court of competent jurisdiction; or specifically that the mental incompetence or insanity is not of such a degree that the individual cannot safely operate as a Qualified Exempt Child Care Provider.

M. "Attendance tracking system (ATS)" means the system used by adult caretakers, teen parents, or another individual delegated by the adult caretaker or teen parent to access benefits and to record child attendance for the purposes of paying for authorized and provided child care.

N. "Authorization" or "Authorized care" means the amount and length of time a child is eligible to receive care by licensed or qualified exempt child care providers to whom social/human services will authorize payment.

O. "Authorization start date" means the date from which payments for child care services are eligible to be paid by the county.

P. "Base reimbursement rate" means the regular daily reimbursement rate paid by the county to the child care provider. This does not include the increase of rates of reimbursement for high-quality early childhood programs. Base reimbursement rates do not include absences, holidays, registration fees, activity fees, and/or transportation fees.

Q. "Basic education" is a Low-Income Child Care eligible activity where an adult caretaker or teen parent is in high school education programs working towards a high school diploma or high school equivalency; Adult Basic Education (ABE); and/or English as a Second Language (ESL).

R. "Cash assistance" means payments, vouchers, and other forms of benefits designed to meet a household's ongoing basic needs such as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. Cash assistance may include supportive services to households based on the assessment completed. All state diversion payments of less than four (4) consecutive months are not cash assistance. For the purpose of child care, county diversion payments are not cash assistance.

S. "Child care authorization notice" means a Department-prescribed form which authorizes the purchase of child care and includes the children authorized for care. The authorization notice will be given to the adult caretaker(s) or teen parent(s) and applicable child care provider(s) in order to serve as notice to the adult caretaker(s) or teen parent(s), and child care provider(s) of approval or change of child care services. Colorado's child care authorization notice(s) are vouchers for the purposes of the CCCAP.

T. "CHATS" means the Child Care Automated Tracking System.

U. "Child care provider" means a child care provider licensed pursuant to Part 3 of Article 5 of Title 26.5 that has an agreement or enrollment contract to participate in CCCAP.

V. "Child Care Resource and Referral Agencies" (CCR&R) means agencies or organizations available to assist individuals in the process of choosing child care providers.

W. "Child care staff" or "child care technician" means individuals who are designated by counties or their designees to administer all, or a portion of, the CCCAP and includes, but is not limited to, workers whose responsibilities are to refer children for child care assistance, determine eligibility, authorize care, process billing forms, and issue payment for child care benefits.

X. "Child Welfare Child Care" means a child care component within CCCAP where less than twenty-four (24) hour child care assistance is needed to maintain children in their own homes or in the least restrictive out-of-home care when there are no other child care options available. See rule manual Volume 7, rule section 7.302, Child Welfare Child Care (12 CCR 2509-4) (June 1, 2023). The entirety of Volume 7 is herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the Colorado Department of Human Services, 1575 Sherman St., Denver, Colorado 80203, or at https://www.sos.state.co.us. These regulations are also available for inspection and copying at the Colorado Department of

Early Childhood, 710 S. Ash Street, Bldg. C, Denver, Colorado 80246, during regular business hours.

Y. "Citizen/legal resident" means a citizen of the United States, current legal resident of the United States, or a person lawfully present in the United States pursuant to Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Public Law 104-193; and Federal Register notices 62 Fed. Reg. 61344 (Nov. 17, 1997) and 63 Fed. Reg. 41658 (Aug. 4, 1998). Herein incorporated by reference. No later amendments or editions are incorporated. These documents are available at no cost from the Office of the Federal Register at: 7 G Street, NW, Ste. A-734, Washington, D.C. 20401, or at https://www.federalregister.gov/. These documents are also available for inspection and copying at the Colorado Department of Early Childhood , 710 S. Ash Street, Bldg. C, Denver, Colorado 80246. Since the child is the beneficiary of child care assistance, the citizen/legal resident requirement only applies to the child who is being considered for assistance.

Z. "Clear and convincing" means proof that is stronger than a preponderance of the evidence and is unmistakable or free from serious or substantial doubt.

AA. "Colorado Child Care Assistance Program" or "CCCAP" means the public assistance program for child care known as the Colorado Child Care Assistance Program established in Part 1 or Article 4 of Title 26.5. CCCAP is administered by the Department and provides child care benefits to households in the following programs: Low-Income Child Care, Colorado Works Child Care, Protective Services Child Care, and Child Welfare Child Care. The Department is responsible for the oversight and coordination of all child care funds and services.

BB. "Colorado Works Program" is the program administered by the Colorado Department of Human Services in Part 7 of Article 2 of Title 26. Colorado Works is Colorado's Temporary Assistance for Needy Families (TANF) program that provides public assistance to households in need. The Colorado Works program is designed to assist adult caretaker(s) or teen parent(s) in becoming self-sufficient by strengthening the economic and social stability of households.

CC. "Colorado Works Child Care" means a child care component within CCCAP for Colorado Works households with an adult caretaker or teen parent who have been referred for child care by the county Colorado Works worker and are determined work eligible per Colorado Works Program rules located at 9 CCR 2503-6 (June 1, 2023), herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the Colorado Department of Human Services, 1575 Sherman St., Denver, Colorado 80203, or at https://www.sos.state.co.us/ccr. These regulations are also available for inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash Street, Bldg. C, Denver, Colorado 80246, during regular business hours.

DD. "Colorado Works households" means members of the same Colorado Works household who meet requirements of the Colorado Works program, through receipt of basic cash assistance or state diversion payments while working toward achieving self-sufficiency through eligible work activities and eventual employment where the adult caretaker(s) or teen parent(s) is included in the assistance unit, as defined in The Colorado Works Program Rules (9 CCR 2503-6), incorporated by reference in subsection (BB) of this rule.

EE. "Collateral Contact" means a verbal or written confirmation of a household's circumstances by a person outside the household who has first-hand knowledge of the information, made either in person, electronically submitted, or by telephone.

FF. "Confirmed abuse or neglect" means any report of an act or omission that threatens the health or welfare of a child that is found by a court, law enforcement agency, or entity authorized to investigate abuse or neglect to be supported by a preponderance of the evidence.

GG. "Consumer Education" means information provided to adult caretaker(s) or teen parent(s), child care providers, and the general public that will promote informed child care choices; information on access to other programs in which families may be eligible; and, information on developmental screenings.

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HH. "County or Counties" means the county departments of social/human services.

II. "Department" means the Colorado Department of Early Childhood.

JJ. "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural cause or cause of human origin, including but not limited to fire, flood, earthquake, wind, storm, wave action, hazardous substance incident, oil spill, or other water contamination requiring emergency action to avert danger or damage, volcanic activity, epidemic, air pollution, blight, drought, infestation, explosion, civil disturbance, hostile military or paramilitary action, or a condition of riot, insurrection, or invasion existing in the state or in any county, city, town, or district in the state.

KK. "Discovery" means that a pertinent fact related to CCCAP eligibility was found by the county to exist.

LL. "Drastic economic change" means an economic impact on the county or state that has a strong or far-reaching effect on the CCCAP.

MM. "Drop in day" means a county-determined number of days that will generate an approval and payment for care utilized outside of the standard authorization.

NN. "Early care and education provider" means a school district or child care provider pursuant to section 26.5-4-103(4), C.R.S.

OO. "Eligible activity,", for the purpose of Low-Income Child Care, means the activity in which the teen parent(s) or adult caretaker(s) are involved. This may include job search; employment; self-employment; training; basic education; or, post-secondary education. For teen parents, training and teen parent education are approved activities for all counties.

PP. "Eligible child" means a child, from birth to the age of thirteen (13) years who needs child care services during a portion of the day, but less than twenty four (24) hours, and is physically residing with the eligible adult caretaker(s) or teen parent(s); or a child with additional care needs under the age of nineteen (19) who is physically or mentally incapable of caring for themselves or is under court supervision and is physically residing with the eligible adult caretaker(s) or teen parent(s). Any child served through the Colorado Works program or the Low-Income Child Care program must be a citizen/legal resident.

QQ. "Emergency" means an unexpected event that places life or property in danger and requires an immediate response through the use of state and community resources and procedures.

RR. "Employment" is a Low-Income Child Care eligible activity where the adult caretaker or teen parent is holding a part-time or full-time job for which wages, salary, in-kind income or commissions are received.

SS. "Enrollment freeze" or "freeze" means when a county ceases enrollment of individuals due to being overspent or being projected to overspend.

TT. "Entry income eligibility level" means the level set by the Department for each county above which an adult caretaker(s) or teen parent(s) is not eligible at original application.

UU. "Equivalent full-time units" mean all part-time units times a factor of .55 to be converted to full-time units. The full-time equivalent units added to the other full-time units shall be less than thirteen (13) in order to be considered part-time for parent fees.

VV. "Exit income eligibility level" is the income level at the twelve (12) month re-determination of eligibility above which the county may deny continuing eligibility and is eighty-five percent (85%) of the Colorado state median income as outlined in rule section 3.111(H).

WW. "Fair market value" means the median resale market value an item or service.

XX. "Families experiencing homelessness" means families who lack a fixed, regular, and adequate nighttime residence and at least one of the following:

1. Children who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters;

2. Children who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

3. Children who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or

4. Migratory children who qualify as experiencing homelessness for the purposes of these rules because the children are living in circumstances described in this definition (1) through (3), of this rule subsection.

YY. "Federal poverty level" (FPL) or "federal poverty guidelines" (FPG) refers to figures set by the Department annually. These figures, based on gross monthly income levels for the corresponding household size, are included in the table in rule section 3.111(H)(2).

ZZ. "Fingerprint-based criminal background check" means a complete set of fingerprints for the qualified exempt provider and anyone eighteen (18) years of age and older residing in the qualified exempt provider's home; or, for the qualified exempt provider if care is provided in the child's home, taken by a qualified law enforcement agency, and submitted to the Colorado Department of Early Childhood, Division of Early Learning Access and Quality, for subsequent submission to the Colorado Bureau of Investigations (CBI). The individual(s) will also be required to submit a background check with the Federal Bureau of Investigation (FBI). Costs for all investigations are the responsibility of the person whose fingerprints are being submitted unless noted otherwise in the county's plan, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families, per rule section 3.130.

AAA. "Fiscal agreement" means a Department-approved agreement between counties or their designees and child care provider(s), which defines the maximum rate possible based on county ceiling rates and quality rating tiers, defines provider rights and responsibilities, and defines responsibilities of the counties or their designees to the child care provider(s). The fully executed fiscal agreement includes noticing of county ceiling rates as well as a copy of the provider's CCCAP reimbursement rates. Fiscal agreements must be:

1. One (1) year in length for qualified exempt child care providers

2. Three (3) years in length for licensed child care providers

BBB. "Fraud/Fraudulent criminal act" means an adult caretaker(s), teen parent(s), or child care provider who has secured, attempted to secure, or aided or abetted another person in securing public assistance to which the adult caretaker(s) or teen parent(s) was not eligible by means of willful misrepresentation/withholding of information or intentional concealment of any essential facts. Fraud is determined as a result of any of the following:

1. Obtaining a "waiver of intentional program violation;"

2. An administrative disqualification hearing; or

3. Civil or criminal action in an appropriate state or federal court.

CCC. "Funding concerns" means a determination by the Department or a county that actual or projected expenditures indicate a risk of overspending of that county's available CCCAP allocation in a current fiscal year.

DDD. "Head Start" means a program operated by a local public or private nonprofit agency designated by the Federal Department of Health and Human Services to operate a head start program pursuant to the provisions of Title V of the Federal "Economic Opportunity Act of 1964", as amended.

EEE. "High-quality early childhood program" means a program operated by a child care provider with a fiscal agreement through CCCAP and, that is in the top three levels of the state's quality rating and improvement system, is accredited by a Department-approved accrediting body, or is an early head start or head start program that meets federal standards.

FFF. "Hold slots" means a county determined number of days when payment is allowed for unused care that is in addition to absences, holidays, and school breaks. Hold slots are intended to hold a child's slot with a provider due to extended absence from care.

GGG. "Household" includes: all children in the home who are under eighteen (18) years of age; all children under nineteen (19) years of age who are still in high school and the responsibility of the adult caretaker(s); and the adult caretaker(s) or teen parent(s).

HHH. "In loco parentis" means a person who is assuming the parent obligations for a child, including protecting their rights and/or a person who is standing in the role of the parent of a child without having gone through the formal adoption process. Parent obligations include, but are not limited to, attending parent teacher conferences, regularly picking up and dropping children at child care, and regularly taking the child to doctor appointments.

III. "Incapacitated" means a physical or mental impairment which substantially reduces or precludes the adult caretaker or teen parent from providing care for his/her child(ren) and participating in a Low-Income Child Care eligible activity. Such a condition shall be documented by a physician's statement or other medical verification which establishes a causal relationship between the impairment and the ability to provide child care.

JJJ. "Income eligibility" means that eligibility for child care benefits is based on and determined by measuring the countable household income and size against eligibility guidelines.

KKK. "Inconsistent" means the information provided is unclear or conflicting or the county has reason to believe the facts presented are contrary to the information provided by the adult caretaker(s) or teen parent(s).

LLL. "Intentional Program Violation (IPV)" means an act committed by an adult caretaker(s) or teen parent(s) who has intentionally made a false or misleading statement or misrepresented, concealed or withheld facts for the purpose of establishing or maintaining a Colorado Child Care Assistance Program household's eligibility to receive benefits for which they were not eligible; or has committed or intended to commit any act that constitutes a violation of the child care assistance program regulations or any state statute related to the use or receipt of CCCAP benefits for the purpose of establishing or maintaining the household's eligibility to receive benefits.

MMM. "Involuntarily out of the home" means when an adult caretaker or teen parent is out of the home due to circumstances beyond his/her immediate control to include, but not be limited to, incarceration, resolution of immigration issues, and/or restraining orders.

NNN. "Job search" is a Low-Income Child Care eligible activity where an adult caretaker or a teen parent is actively seeking employment.

OOO. "Low-Income Program" or "Low-Income Child Care" means a child care component within CCCAP for households with an adult caretaker(s) or teen parent(s) who is/are in a low-income eligible activity, income eligible, and not receiving Colorado Works, Child Welfare, or Protective Services child care.

PPP. "Manual Claim" means the child care provider's process of invoicing the county using the Department-prescribed manual claim form for reimbursements that were not processed automatically through CHATS including but not limited to:

1. Care that was authorized and provided;

2. Reimbursable registration fees;

3. Reimbursable activity fees;

4. Reimbursable transportation fees;

5. Reimbursable hold slots;

6. Reimbursable drop in days; and

7. Reimbursable absence payments.

QQQ. "Maternity and/or paternity leave" is a temporary period of absence from the adult caretaker or teen parent's Low-Income Child Care eligible activity that is granted to expectant or new mothers and/or fathers for the birth and care of a newborn child.

RRR. "Medical leave" means a temporary period of absence from the adult caretaker or teen parent's Low-Income Child Care eligible activity that is granted due to a personal illness or injury, or to care for a family member that is not related to maternity/paternity leave.

SSS. "Negative licensing action" means a Final Agency Action resulting in the denial of an application, the imposition of fines, or the suspension or revocation of a license issued pursuant to the Child Care Licensing Act or the demotion of such a license to a probationary license.

TTT. "New employment verification" means verification of employment that has begun within the last sixty (60) days. It is verified by a county form, employer letter, or through collateral contact. Verification includes a start date, hourly wage or gross salary amount, hours worked per week,

pay frequency, work schedule (if nontraditional care hours are requested at application or re-determination), and verifiable employer contact information.

UUU. "Non-traditional care hours" means weekend, evening, or overnight care.

VVV. "Originating county" means the county where child care assistance eligibility was initiated in instances where a family receiving low-income child care moves from one county to another during their eligibility period.

WWW. "Overpayment" means child care assistance received by the adult caretaker(s) or teen parent(s), or monies paid to a child care provider, which they were not eligible to receive.

XXX. "Parent" means a biological, adoptive or stepparent of a child.

YYY. "Parent fee or co-payment" means the household's contribution to the total cost of child care paid directly to the child care provider(s) prior to any state/county child care funds being expended.

ZZZ. "Pay stubs" means a form or statement from the employer indicating the name of the employee, the gross amount of income, mandatory and voluntary deductions from pay (i.e. FICA, insurance, etc.), net pay and pay date, along with year-to-date gross income.

AAAA. "Physical custody" means that a child is living with, or in the legal custody of, the adult caretaker(s) or teen parent(s) on the days/nights they receive child care assistance.

BBBB. "Post eligibility stabilization period" means the time frame in which an adult caretaker or teen parent must complete their job search activity if, at Low-Income Child Care re-determination, they have not utilized their entire minimum thirteen (13) week time limited activity.

CCCC. "Preponderance of evidence" means credible evidence that a claim is more likely true than not.

DDDD. "Primary adult caretaker" means the person listed first on the application and who accepts primary responsibility for completing forms and providing required verification.

EEEE. "Protective Services Child Care" means a child care component within CCCAP for children that have been placed by the county in foster home care, kinship foster home care or non-certified kinship care; have an open child welfare case; and, the county has chosen to provide child care services utilizing the Child Care Development Fund (CCDF) rather than the Child Welfare Block Grant.

FFFF. "Prudent person principle (PPP)" means allowing the child care technician to act in a manner consistent with what a reasonable person of ordinary prudence would or would not do under the same or similar circumstances when executing their responsibilities to determine CCCAP eligibility, enter into a fiscal agreement, and reimburse child care providers for care that was not automatically processed through CHATS.

GGGG. "Qualified exempt child care facilities" means a facility that is approved, certified, or licensed by any other department or agency, or federal government department or agency, which has standards for operation of the facility and inspects or monitors the facility; and has been declared exempt from the child care licensing act as defined in Colorado Department of Human Services regulations at 12 CCR 2509-8, rule section 7.701.11 (June 1, 2023). Herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the Colorado Department of Human Services, 1575 Sherman St., Denver, Colorado 80203, or at https://www.sos.state.co.us/ccr. These regulations are also available for inspection and copying at the Colorado Department of Early Childhood, 720 S. Ash Street, Bldg. C, Denver, Colorado 80246, during regular business hours, or at https://www.sos.state.co.us/ccr.

HHHH. "Qualified exempt child care provider" means a family child care home provider who is not licensed but provides care for a child(ren) from the same family; or an individual who is not licensed but provides care for a child(ren) who is related to the individual if the child's care is funded in whole or in part with money received on the child's behalf from the publicly funded CCCAP under Colorado Department of Human Services regulations at rule section 7.701.11, A, 1, b, incorporated by reference in subsection (GGGG), above.

IIII. "Rate notification" means a notification of provider reimbursement rates and applicable registration, activity, or transportation fees that reflect the child care provider's CCCAP reimbursement rate based on the comparison of the county's ceiling rates that are reflected in the current fiscal agreement and the provider's private pay rates, quality level or rate types.

JJJJ. "Receiving county" means the county where child care assistance eligibility is re-determined after a family receiving low-income child care moves from one county to another during their eligibility period.

KKKK. "Recipient" means the individual or family who is receiving or has received benefits from CCCAP pursuant to Part 1 of Article 4 of Title 26.5.

LLLL. "Recovery" means the act of collecting monies when an adult caretaker(s), teen parent(s) or child care provider has received childcare assistance benefits for which they were not eligible, commonly known as an "over payment".

MMMM. "Re-determination (redet) form" is a Department-prescribed form, which includes appeal rights, that is used to determine a household's continued eligibility for Low-Income Child Care at the end of their twelve (12) month minimum eligibility period.

NNNN. "Re-determination (Redet) process" is the process to update eligibility for Low-Income Child Care. This process is completed no earlier than every twelve (12) months and includes:

1. The Department-prescribed re-determination form, which must be completed and signed by the adult caretaker or teen parent or their authorized representative; and

2. The required verification that supports the information declared on the re-determination form that is needed to determine continued eligibility.

OOOO. "Regionally accredited institution of higher education" means a community college, college, or university which is a candidate for accreditation or is accredited by one of the following regional accrediting bodies: Middle States, Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Commission on Colleges and Universities, Southern Association of Colleges and Schools, Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges.

PPPP. "Relative" means any of the following relationships by blood, marriage, or adoption: parent, grandparent, son, daughter, grandson, granddaughter, brother, sister, stepparent, stepbrother, stepsister, stepson, stepdaughter, uncle, aunt, niece, nephew, or cousin.

QQQQ. "Risk-based audit" means audit selection based on a combination of the likelihood of an event occurring and the impact of its consequences. This may include, but not be limited to, the number, dollar amounts and complexity of transactions; the adequacy of management oversight and monitoring; previous regulatory and audit results; review of the technician's accuracy; and/or reviews for separation of duty.

RRRR. "Self-employment" is a Low-Income Child Care eligible activity where an adult caretaker or teen parent is responsible for all taxes and/or other required deductions from earned income.

SSSS. "Self-sufficiency standard" means the level of income adequate in each county for a given year to meet the cost of basic needs, exclusive of child care costs, based on a verifiable and statistically based third party source.

TTTT. "Slot contracts (county option)" means the purchasing of slots at a licensed child care provider for children enrolled in CCCAP in communities where quality care may not otherwise be available to county-identified target populations and areas or to incentivize or maintain quality. A slot contract is tied to a licensed child care provider and may be filled by any child who is eligible for and receiving CCCAP.

UUUU. "State established age bands" means the breakdown of child age ranges used when determining child care provider base reimbursement rates.

VVVV. "State or local public benefit" means any grant, contract, loan, professional license, or commercial license provided by an agency of a state or local government, or by appropriated funds of a state or local government.

WWWW. "State Median Income" (SMI) refers to figures set by the Department annually. These figures, based on gross monthly income levels for the corresponding household size, are included in the table in rule section 3.111(H)(2).

XXXX. "Substantiated" means that the investigating party has found a preponderance of evidence to support the complaint.

YYYY. "Target population" means a population whose eligibility is determined by criteria different than other child care populations, and has a priority to be served regardless of wait lists or freezes based upon appropriations. Current target populations include:

1. Households whose income is at or below 130% of the current federal poverty guidelines;

2. Teen parents;

3. Children with additional care needs;

4. Families experiencing homelessness; and

5. Segments of population defined by county, based on local needs.

ZZZZ. "Teen parent" means a parent under twenty-one (21) years of age who has physical custody of his/her child(ren) for the period that care is requested and is in an eligible activity such as attending junior high/middle school, high school, GED program, vocational/technical training activity, employment, self-employment, or job search.

AAAAA. "Temporary Absence or Temporary Break" means a period of time when an adult caretaker or teen parent is absent from their employment, self-employment, or education activity due to seasonal work, medical leave, maternity/paternity leave, and holidays or scheduled breaks but still remains employed, self-employed, or enrolled in training or education, while receiving Low-Income Child Care, and will return to the activity after the duration of their leave or break.

BBBBB. "Tiered reimbursement" means a pay structure that reflects increasing rates for high-quality early childhood programs that receive CCCAP reimbursement. These increases are made in addition to the base reimbursement rate.

CCCCC. “Timely written notice” means that any adverse action shall be preceded by a prior notice period of fifteen (15) calendar-days. “Timely” means that written notice is provided to the household and child care provider at least by the business day following the date the action was entered into the eligibility system. The fifteen (15) calendar-day prior notice period constitutes the period during which assistance is continued and no adverse action is to be taken during this time.

DDDDD. “Training and post-secondary education” is a Low-Income Child Care eligible activity where an adult caretaker or teen parent attends educational programs including regionally accredited post-secondary education for a Bachelor's degree or less or a workforce training program such as vocational, technical, or job skills training. Workforce training programs include educational activities after completing basic education.

EEEEE. “Transition families” means households ending their participation in the Colorado Works Program and who are eligible to transition to Low-Income Child Care Assistance.

FFFFF. “Units” or “unit of care” means the period of time authorized care is billed by a child care provider and paid for a household. (These units would be full-time, part-time, full-time/part-time, or full-time/full-time.)

GGGGG. “Up-to-date immunizations” means documentation of immunization status or exemption as required by the Colorado Department of Public Health and Environment (CDPHE). Immunizations required for school entry are set by the board of health and based on recommendations of the Advisory Committee on Immunization Practices (ACIP).

HHHHH. “Voluntarily out of the home” means circumstances where an adult caretaker or teen parent is out of the home due to his/her choice to include, but not be limited to, job search, employment, military service, vacations, and/or family emergencies.

IIIII. “Wait list” means a list maintained by a county that reflects individuals who have submitted a complete application for the CCCAP program for whom the county is not able to immediately enroll.

JJJJJ. “Willful misrepresentation/withholding of information” means an understatement, overstatement, or omission, whether oral or written, made by a household voluntarily or in response to oral or written questions from the Department, and/or a willful failure by a household to report changes in income, if the household’s income exceeds eighty-five percent (85%) of the State median income within ten (10) days, or changes to the qualifying eligible activity within four weeks of the change.

3.104 CCCAP APPROPRIATIONS

Nothing in these rules shall create a legal entitlement to child care assistance. Counties shall not be required to expend funds exceeding allocated state and federal dollars or exceeding any matching funds expended by the counties as a condition of drawing down federal and state funds.

When a county can demonstrate, through a written justification in its county CCCAP plan, that it has insufficient CCCAP allocations, a county is not required to implement a provision or provisions of rule(s) enacted under statutory provisions that are explicitly “subject to available appropriations.” The county is not required to implement that or those rules or statutory provision(s) for which it has demonstrated through its annual CCCAP plan that it has insufficient CCCAP allocations to implement, except for the entry income eligibility floor referenced in rule section 3.111(H).

As part of its demonstration, the county shall include a list of priorities reflecting community circumstance in its county CCCAP plan that prioritizes the implementation of the rules and/or provisions of statute that are “subject to available appropriations.”

If the Department determines the county CCCAP plan is not in compliance with these rules and/or provisions of statute, the Department will first work with the county to address the concerns. If a resolution cannot be agreed upon, the Department reserves the right to deny the county CCCAP plan. If the Department denies the county CCCAP plan, the county and the state shall work together to complete a final approved county CCCAP plan that is in compliance with these rules and statute. Approved county CCCAP plans can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families

3.105 PROGRAM FUNDING

A. CCCAP will be funded through annual allocations made to the counties. Counties may use annual allocation for child care services which includes direct services and administration.

B. Each county shall be required to meet a level of county spending for the Colorado Child Care Assistance Program that is equal to the county's proportionate share of the total county funds set forth in the annual general Appropriation Act for the CCCAP for that State fiscal year. The level of county spending shall be known as the county's maintenance of effort for the program for that State fiscal year.

C. The CCCAP allocation formula shall be applied uniformly across all counties and must be based on the relative cost of the program. The allocation formula must take into consideration:

1. The eligible population for each county using the federal poverty level (FPL) as outlined in rule section 3.111(H); and

2. Reimbursement rates set by the state as informed by the market rates study.

3. If not already taken into consideration in the initial allocation formula as stated in rule sections 3.105(C)(1) and (2), the following factors must also be included:

    a. A measure of cost of living, which may include market rates; and

    b. The cost of high quality child care programs.

4. If not already taken into consideration in the initial allocation formula, the formula may include the following factors:

    a. A statewide adjustment to the allocation formula for geographic differences within counties or regional differences among counties in order to improve access.

    b. A statewide adjustment to the allocation formula for drastic economic changes that may impact the ability of CCCAP to serve low-income families.

    c. A statewide adjustment to mitigate significant decreases in county allocation amounts due to changes in the factors considered in the initial allocation formula.

APPLICANT RIGHTS

3.106 ANTI-DISCRIMINATION

Child care programs shall be administered in compliance with Title VI of the Civil Rights Act of 1964 (42 USC 2000(d)) located at http://www.fhwa.dot.gov/environment/title_vi.htm; Title II of the Americans with Disabilities Act (42 USC 12132(b)).

A. Counties or their designee shall not deny a person aid, services, or other benefits or opportunity to participate therein, solely because of age, race, color, religion, gender, national origin, political beliefs, or persons with a physical or mental disability.

B. No otherwise qualified individual with a physical or mental disability shall solely, by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity provided by the counties or their designee(s).

C. The county shall make services available to all eligible adult caretaker(s) and teen parents, subject to appropriations, including those with mental and physical disabilities and non-English speaking individuals, through hiring qualified staff or through purchase of necessary services.

3.107 CONFIDENTIALITY

The use or disclosure of information by the counties or their designee(s) concerning current or prior applicants and recipients shall be prohibited except for purposes directly connected with the activities listed below:

A. The administration of public assistance programs, Child Welfare, Head Start and Early Head Start programs, and related activities.

B. Any investigation, recovery, prosecution, or criminal or civil proceeding in connection with the administration of the program.

C. The adult caretaker(s) or teen parent(s) applying for CCCAP may authorize a licensed child care provider or Head Start provider to assist them with the completion of a Low-Income Child Care application, including collection and organization of supporting documentation and submission of the application and supporting documents to a county. Authorization for application assistance and release of information shall be obtained on a Department-approved form and included with the Low-Income Child Care application.

3.108 TIMELY WRITTEN NOTICE OF ADVERSE ACTION

A decision to take adverse action concerning an applicant or a child care provider for assistance payments will result in a written notice mailed to the applicant or child care provider within one (1) business day of the decision. The written notice is considered mailed when it is faxed, emailed, sent via other electronic systems, hand-delivered, or deposited with the postal service. Fifteen (15) calendar days will follow the date of mailing the notice before adverse action is taken with the following exceptions that require no prior notice:

A. Facts indicate an overpayment because of probable fraudulent behavior or an intentional program violation and such facts have been verified to the extent possible.

B. The proposed adverse action is based on a written or verbal statement from the adult caretaker(s) or teen parent(s) who state(s) that he/she no longer wishes to receive assistance or services.

C. The proposed adverse action is requested by another county or the Department.

D. The counties or their designee(s) have confirmed the death of a recipient or of adult care taker or teen parent.

E. The county has exercised its right to terminate a fiscal agreement with any child care provider because a child’s health or safety is endangered, or the child care provider is under a negative licensing action.

3.109 ADULT CARETAKER OR TEEN PARENT AND CHILD CARE PROVIDER APPEAL RIGHTS

Counties' or designee(s)' staff shall advise adult caretakers or teen parents in writing of their right to a county dispute resolution conference or state level fair hearing pursuant to Colorado Department of Human Services rule sections 3.840 and 3.850 of Income Maintenance Volume 3 (9 CCR 2503-8) (July 1, 2020), herein incorporated by reference. No later editions or amendments are incorporated. A copy of these rules are available at no cost from the Colorado Department of Human Services, 1575 Sherman St., Denver, CO 80203 or at https://www.sos.state.co.us/CCR. These rules are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 Ash St., Denver, CO 80246, during regular business hours.

Child care providers shall be given written notice of their right to an informal county conference when they are given their copy of the fiscal agreement.

3.110 LOW-INCOME CHILD CARE

Eligible CCCAP participants must: be an adult caretaker(s) or teen parent(s) of a child; meet program guidelines; be low-income adult caretakers or teen parents participating in a low-income eligible activity; and need child care assistance.

3.111 LOW-INCOME CHILD CARE ELIGIBILITY

To be eligible for Low-Income Child Care assistance the following criteria shall be met:

A. All adult caretakers and teen parents shall be verified residents of the county from which assistance is sought and received at the time of application and re-determination. Adult caretaker(s) or teen parent(s) shall remain eligible for the duration of the eligibility period if they report that they are no longer residents of the county in which they are actively receiving assistance per rule section 3.125(BB).

B. The adult caretaker(s) or teen parent(s) shall:

1. Be actively participating in an eligible activity;

2. Meet the income eligibility guidelines set by the Department; and

3. Have physical custody of the child for the period they are requesting care.

C. The applicant must complete the CCCAP application process and the primary adult caretaker or teen parent must sign the required application forms. This includes:

1. The State Low-Income Child Care Assistance Program application, which includes appeal rights, signed and completed by the applicant .

a. Counties may accept applications from another public assistance program in lieu of the Low-Income Child Care application.

b. Counties with Head Start programs may accept the Head Start application in lieu of the Low-Income Child Care application for those children enrolled in the head start program and counties are encouraged to work with local Head Start programs to coordinate this effort.

c. Families enrolled in a Head Start or Early Head Start program at the time they apply for CCCAP shall have a re-determination date that aligns with the Head Start or Early Head Start program year.

2. The required verification supporting the information declared on the application form, including:

    a. Proof of current residence;

    b. Citizenship, age, and identity of the child(ren) for whom care is requested;

        1) A child's citizenship status, age, and identity are considered to be verified if the complete application includes the child's age and citizenship status and is signed attesting to the child's identity unless the county determines that the declaration of citizenship, age, and/or identity is inconsistent.

        2) The county must request additional verification if the adult caretaker or teen parent's declaration is determined to be inconsistent based on the following guidelines:

            a) If the claim of citizenship, age, and/or identity is inconsistent with statements made by the adult caretaker or teen parent, with other information on the application, or on previous applications;

            b) If the claim of citizenship, age, and/or identity is inconsistent with the documentation provided by the adult caretaker or teen parent; and/or

            c) If the claim of citizenship, age, and/or identity was previously received from another source such as another public assistance program including Colorado Works, the Supplemental Nutrition Assistance Program (SNAP), or Medicaid, and the claim is inconsistent with the information previously received from that source.

    c. Up-to-date immunizations, if applicable;

    d. Statement of low-income eligible activity;

    e. Work or low-income activity Schedule (if non-traditional care hours are requested at application or redetermination);

    f. Income;

    g. Incapacitation, if applicable;

    h. Custody arrangement and/or parenting schedule, if applicable;

    i. Child care provider if one has been chosen at the time of application; and

    j. Other verifications as determined by the Department-approved county plan which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families.

3. An orientation or interview for new applicants as a county option. Counties shall ensure that the orientation or interview process is not burdensome to families by allowing a family to complete the process via phone or electronic tools or by offering extended office hours to hold the orientation or interview.

D. Eligible Households

1. The following household compositions qualify as eligible households:

   a. Households with one adult caretaker or teen parent, where the adult caretaker or teen parent is engaged in a low-income eligible activity, meets low-income eligibility guidelines, has physical custody of the child, and needs child care assistance.

   b. Households with two adult caretakers or teen parents, when one adult caretaker or teen parent is involuntarily out of the home. Such a household shall be considered a household with one adult caretaker or teen parent.

   c. Households with two (2) adult caretakers or teen parents that need child care, where:

      1) Both adult caretakers or teen parents are engaged in a low-income eligible activity;

      2) One adult caretaker or teen parent is voluntarily absent from the home, but both adult caretakers or teen parents are in a low-income eligible activity; or

      3) One adult caretaker or teen parent is engaged in a low-income eligible activity and the other adult caretaker or teen parent is incapacitated such that, according to a physician's statement or other medical verification, they are unable to care for the child(ren).

2. Households are considered households with two adult caretakers or teen parents when two adults or teen parents contribute financially to the welfare of the child and/or assume parent rights, duties, and obligations similar to those of a biological parent, even without legal adoption.

3. Two separate adult caretakers or teen parents who share custody but live in separate households may apply for the same child through separate applications, during periods that they have physical custody.

4. All adult caretakers or teen parents who are engaged in a low-income eligible activity must have physical custody of the child and meet low-income eligibility guidelines.

5. Any unrelated individual who is acting as a primary adult caretaker for an eligible child is required to obtain verification from the child's biological or adoptive parent, legal guardian, or a court order which identifies the unrelated individual as the child's adult caretaker.

6. Adult caretakers or teen parents that are not determined work eligible per Colorado Works Program rule (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB) above, who are caring for children receiving Basic Cash Assistance through the Colorado Works Program are not eligible for Colorado Works Child Care but may be eligible for Low-Income Child Care if the adult caretaker or teen parent meets all other Low-Income program criteria.

7. Adoptive parents (including those receiving adoption assistance) are eligible if they meet the Low-Income program requirements.

8. Adult caretaker(s) or teen parent(s) who are participating in a low-income eligible activity and go on temporary verified maternity/paternity leave.

9. Adult caretaker(s) or teen parent(s) with an open and active Low-Income Child Care case who are participating in a low-income eligible activity and go on temporary verified medical leave and are unable to care for their children.

10. A separated primary adult caretaker or teen parent with a validly issued temporary order for parental responsibilities or child custody shall not be determined ineligible based on the other spouse's or parent's financial resources.

E. Ineligible Household Compositions

Incapacitated single adult caretakers or teen parents who are not in a low-income eligible activity are not eligible for the low-income program.

F. Eligible Child

An "eligible child" is a child from birth to the age thirteen (13) years who needs child care services during a portion of the day, but less than twenty four (24) hours, and is physically residing with the eligible adult caretaker(s) or teen parent(s); or a child with verified additional care needs under the age of nineteen (19) who is physically or mentally incapable of caring for themselves or is under court supervision and is physically residing with the eligible adult caretaker(s) or teen parent(s).

1. All children who have had an application made on their behalf or are receiving child care assistance shall verify that they are a citizen/legal resident and provide proof of identity if inconsistent, in accordance with rule section 3.111©(2)(b).

2. Children who are not attending school as defined by the Colorado Department of Education and who are receiving child care outside of the child's home from a qualified exempt child care provider who is unrelated to the child must provide a copy of their immunization record to the county, indicating that the children are age-appropriately immunized or have a religious or medical exemption (see sections 25-4-902 and 25-4-908, C.R.S., for exemption requirements).

G. Low-Income Eligible Activities

Adult caretakers or teen parents shall meet the criteria of at least one of the following low-income eligible activities:

1. Employment Criteria

   a. Adult caretakers or teen parents may be employed full or part time.

   b. Adult caretaker(s) or teen parent(s) must verify that his/her gross income divided by the number of hours worked equals at least the current federal minimum wage.

   c. Owners of Limited Liability Corporations (LLC) and S-Corporations are considered employees of the corporation.

2. Self-Employed Criteria

   a. The adult caretaker(s) or teen parent(s) shall submit documentation listing their income and work-related expenses. The county shall obtain verification of all

expenses from the adult caretaker(s) or teen parent(s) or they will not be considered.

b. The adult caretaker(s) or teen parent(s) shall submit an expected weekly employment schedule that includes approximate employment hours. This is required upon beginning self-employment, at application, and at redetermination.

c. The adult caretaker(s) or teen parent(s) shall show that they have maintained an average income that exceeds their business expenses from self-employment.

d. The adult caretaker(s) or teen parent(s) shall show that their taxable gross income divided by the number of hours worked equals at least the current federal minimum wage.

e. Adult caretakers or teen parent(s) whose self-employment endeavor is less than twelve (12) months old, may be granted child care for six (6) months or until their next re-determination, whichever is longer, to establish their business. At the end of the launch period, adult caretakers shall provide documentation of income, verification of expenses, and proof that they are making at least federal minimum wage for the number of hours worked. Projected income for the launch period shall be determined based upon the federal minimum wage times the number of declared hours worked.

3. Job Search Criteria

a. Job search child care is available to eligible adult caretakers or teen parents that met the eligibility criteria on the most recent eligibility determination for no fewer than thirteen (13) weeks of child care for each instance of non-temporary cessation of activity (per rule section 3.112(C).

b. If the job search activity is reported within the four (4) week reporting period, the activity shall begin the day that the change in activity was reported. If the job search activity is reported outside of the four (4) week reporting period, the activity shall begin the date that activity cessation occurred.

c. Job search shall continue until the adult caretaker or teen parent gains employment, enters into another low-income eligible activity, or when all of the allotted job search time has been utilized. Any day utilized in a week is considered one (1) week used toward the time limited activity.

d. Regular consistent child care must be provided during the job search period.

e. The amount of care authorized each day shall, at a minimum, be commensurate with the amount needed to complete the job search tasks.

f. Job search child care shall be approved in each instance of non-temporary job loss or when adult caretakers or teen parents end their low-income eligible activity while enrolled in the Low-Income program.

g. An adult caretaker or teen parent shall be determined ineligible once they have utilized their allotted job search time and have not reentered into a low-income eligible activity.

h. If at the time of re-determination, the adult caretaker or teen parent remains in a job search activity, has not utilized the remainder of their allotted job search time,

and has provided the required re-determination documentation, the county shall place the case into a post-eligibility stabilization period for the duration of the remaining job search time.

1) If during the post-eligibility stabilization period the adult caretaker or teen parent reports that they have gained employment or reentered into another low-income eligible activity, the county shall process this change, continue care, and assess a parent fee.

2) The adult caretaker or teen parent shall be determined ineligible if they have not reentered into a low-income eligible activity and the post eligibility stabilization period has expired.

4. Training Criteria and Post-Secondary Education

Subject to available appropriations, an adult caretaker(s) who is enrolled in a training or post-secondary education program is eligible for CCCAP for at least one-hundred-four (104) weeks and up to two-hundred-eight (208) weeks per lifetime, provided all other eligibility requirements are met during the adult caretaker's enrollment. These weeks do not have to be used consecutively. A county may give priority for services to a working adult caretaker(s) over an adult caretaker(s) enrolled in post-secondary education or workforce training. When a teen parent becomes enrolled in post-secondary education, they are considered an adult caretaker and the time limited activity timelines apply.

County child care staff may refer adult caretakers and teen parents to community employment and training resources for assistance in making a training and postsecondary education decision.

a. Adult caretaker educational programs include post-secondary education for a first bachelor's degree or less, or workforce/vocational/technical job skills training when offered as secondary education, which result in a diploma or certificate, for at least one-hundred-four (104) weeks and up to two-hundred-eight (208) weeks per lifetime. This is limited to coursework for the degree or certificate.

b. In addition to the weeks of assistance available for post-secondary and vocational or technical training, up to fifty-two (52) weeks of assistance is allowable for basic education.

c. Any week in which at least one (1) day is utilized for child care is considered one (1) week used toward the time limit.

H. Low-Income Eligibility Guidelines

1. Adult caretaker(s) or teen parent(s) gross income must not exceed eighty-five percent (85%) of the state median income.

a. Entry eligibility shall be set by the Department at a level based on the self-sufficiency standard, not to be set below one hundred eighty-five percent (185%) of the federal poverty level.

b. Exit income eligibility must be eighty-five percent (85%) of the state median income.

2. Effective October 1, 2023, monthly gross income levels, for one-hundred percent (100%) of the Federal Poverty Guideline (FPG), as well as eighty-five percent (85%) of State Median Income (SMI) for the corresponding household size are as follows:

Family Size	100% Federal Poverty Guideline (FPG)	85% State Median Income (SMI) (State and Federal Maximum Income Limit)
1	$1,215.00	$4,366.15
2	$1,643.33	$5,709.58
3	$2,071.67	$7,053.01
4	$2,500.00	$8,396.44
5	$2,928.33	$9,739.87
6	$3,356.67	$11,083.30
7	$3,785.00	$11,335.20
8	$4,213.33	$11,587.09
Each Additional person	$428.33	$251.89

3. Generally, the expected monthly income amount is based on the income received in the prior thirty (30) day period; except that, when the prior thirty (30) day period does not provide an accurate indication of anticipated income as referenced in the definition of "Income Eligibility" in rule section 3.103(JJJ) or under circumstances as specified below, a different period of time may be applicable:

   a. For new or changed income, a period shorter than a month may be used to arrive at a projected monthly amount.

   b. For contract employment in cases, such as in some school systems, where the employees derive their annual income in a period shorter than a year, the income shall be prorated over the term of the contract, provided that the income from the contract is not earned on an hourly or piecework basis.

   c. For regularly received self-employment income, net earnings will usually be prorated and counted as received in a prior thirty (30) day period, except for farm income. For further information, see rule section 3.111(I)(3) on self-employment under countable earned income.

   d. For all other cases where receipt of income is reasonably certain, but the monthly amount is expected to fluctuate, a period of up to twelve (12) months may be used to arrive at an average monthly amount.

   e. For income from rental property to be considered as self-employment income, the adult caretaker(s) or teen parent(s) shall actively manage the property at least an average of twenty (20) hours per week. Income from rental property will be considered as unearned income if the adult caretaker(s) or teen parent(s) are not actively managing the property an average of at least twenty (20) hours per week. Rental income, as self-employment or as unearned income, may be averaged over a twelve (12) month period to determine monthly income. Income from jointly owned property shall be considered as a percentage at least equal to the percentage of ownership or, if receiving more than percentage of ownership, the actual amount received.

f. For cases where a change in the monthly income amount can be anticipated with reasonable certainty, such as with Social Security cost-of-living increases or other similar benefit increases, the expected amount shall be considered in arriving at countable monthly income for the month received.

g. Income inclusions and exclusions (rule sections 3.111(I) and (J)) shall be used in income calculations.

h. Irregular child support income, not including lump sum payments, may be averaged over a period of time up to twelve (12) months in order to calculate household income.

i. Non-recurring lump sum payments, including lump sum child support payments, may be included as income in the month received or averaged over a twelve (12) month period, whichever is most beneficial for the recipient.

4. Income Verification at Application and Re-determination

a. Earned Income

1) For ongoing employment, income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income if they choose to do so if such verification more accurately reflects a household's current income level.

2) For employment that has begun or changed within the last sixty (60) days, a new employment verification letter may be used.

3) For self-employment income the adult caretaker or teen parent shall submit documentation listing his/her income and work-related expenses for the prior thirty (30) day period. On a case-by-case basis, if the prior thirty (30) day period does not provide an accurate indication of anticipated income, a county can require verification of up to twelve (12) of the most recent months of income and expenses to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income and expenses if they choose to do so if such verification more accurately reflects a household's current income level. The county shall obtain verification of all expenses from the adult caretaker(s) or teen parent(s) or they will not be considered. The adult caretaker(s) or teen parent(s) shall submit documentation listing his/her income and work-related expenses to the county.

b. Unearned Income

Unearned income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen

parent(s) may choose to also provide verification of up to twelve (12) of the most recent months of income if such verification more accurately reflects a household's current income level.

c. Adult caretakers or teen parents shall self-declare that their liquid and non-liquid assets do not exceed one million dollars. If assets exceed one million dollars the household is ineligible for CCCAP.

d. If written documentation is not available at time of eligibility determination, verbal verification from the employer or other person issuing the payment may be obtained. Counties shall document the verbal verification in the case file to include the date that the information was received, who provided the information, and a contact phone number.

e. If income is not verified

1) At application

a) If verifications are not returned within the fifteen (15) day noticing period the application will be denied.

b) If all verification has not been submitted within sixty (60) calendar-days of the application date then the county shall require a new application.

2) At re-determination, if all verifications are not received within the fifteen (15) day noticing period, the CCCAP case will be closed.

I. Income Inclusions

Each of the following are considered countable income and are taken into consideration for eligibility for child care.

1. Gross earnings, salary, armed forces pay (including but not limited to basic pay, basic assistance for housing (BAH) and basic assistance for subsistence (BAS), hazard duty pay, and separation pay), commissions, tips, and cash bonuses are counted before deductions are made for taxes, bonds, pensions, union dues and similar deductions. If child care is provided for an employment activity, then gross wages divided by the number of hours worked shall equal at least the current federal minimum wage.

2. Taxable gross income (declared gross income minus verified business expenses from one's own business, professional enterprise, or partnership) from non-farm self-employment.

a. These verified business expenses include, but are not limited to:

1) The rent of business premises;

2) Wholesale cost of merchandise;

3) Utilities;

4) Taxes;

5) Mileage expense for business purposes only;

6) Labor; and

7) Upkeep of necessary equipment.

b. The following are not allowed as business expenses from self-employment:

1) Depreciation of equipment;

2) The cost of and payment on the principal of loans for capital asset or durable goods; and

3) Personal expenses such as personal income tax payments, lunches, and transportation to and from work.

c. If child care is provided for a self-employment activity, then taxable gross wages divided by the number of hours worked shall equal at least the current federal minimum wage. To determine a valid monthly income taxable gross income may be averaged for a period of up to twelve (12) months.

3. Taxable gross income (gross receipts minus operating expenses from the operation of a farm by a person on their own account, as an owner, renter, or tenant farming) from farm self-employment.

a. Gross receipts include, but are not limited to:

1) The value of all products sold;

2) Government crop loans;

3) Money received from the rental of farm equipment and/or farm land to others; and

4) Incidental receipts from the sale of wood, sand, gravel, and similar items.

b. Operating expenses include, but are not limited to:

1) Cost of feed, fertilizer, seed, and other farming supplies;

2) Cash wages paid to farmhands;

3) Cash rent;

4) Interest on farm mortgages;

5) Farm building repairs; and

6) Farm taxes (not state and federal income taxes).

c. The value of fuel, food, or other farm products used for family living is not included as part of net income. If child care is provided for an employment activity, then taxable gross wages divided by the number of hours worked shall equal at least the current federal minimum wage. To determine a valid monthly income, taxable gross income may be averaged for a period of up to twelve (12) months. For all other cases where receipt of income is reasonably certain but the

monthly amount is expected to fluctuate, a period of up to twelve (12) months shall be used to arrive at an average monthly amount.

4. An in-kind benefit is any gain or benefit received by the adult caretaker(s) or teen parent(s) as compensation for employment, which is not in the form of money such as meals, clothing, public housing, or produce from a garden. A dollar amount must be established for this benefit, and it must be counted as other income. The dollar amount is based on the cost or fair market value.

5. Vendor payments are money payments that are not payable directly to an adult caretaker or teen parent but are paid to a third party for a household expense and are countable when the person or organization making the payment on behalf of a household is using funds that otherwise would need to be paid to the adult caretaker(s) or teen parent(s) and are part of the compensation for employment.

6. Railroad retirement insurance

7. Veterans Payments

    a. Retirement or pension payments paid by defense finance and accounting services (DFAS) to retired members of the Armed Forces;

    b. Pension payments paid by the Veteran's Administration to disabled members of the Armed Forces or to survivors of deceased veterans;

    c. Subsistence allowances paid to veterans through the GI bill for education and on-the-job training; and

    d. "Refunds" paid to veterans as GI insurance premiums.

8. Pensions and annuities (minus the amount deducted for penalties, if early payouts are received from these accounts)

    a. Retirement benefit payments;

    b. 401(k) payments;

    c. IRA payments;

    d. Pension payments; or

    e. Any other payment from an account meant to provide for a retired person or their survivors.

9. Dividends

10. Interest on savings or bonds

11. Income from estates or trusts

12. Net rental income

13. Royalties

14. Dividends from stockholders

15. Memberships in association

16. Periodic receipts from estates or trust funds

17. Net income from rental of a house, store, or other property to others

18. Receipts from boarders or lodgers

19. Net royalties

20. Inheritance, gifts, and prizes

21. Proceeds of a life insurance policy, minus the amount expended by the beneficiary for the purpose of the insured individual's last illness and burial, which are not covered by other benefits

22. Proceeds of a health insurance policy or personal injury lawsuit to the extent that they exceed the amount to be expended or shall be expended for medical care

23. Strike benefits

24. Lease bonuses and royalties (e.g., oil and mineral)

25. Social Security pensions, survivor's benefits and permanent disability insurance payments made prior to deductions for medical insurance

26. Unemployment insurance benefits

27. Worker's compensation received for injuries incurred at work

28. Maintenance payments made by an ex-spouse as a result of dissolution of a marriage

29. Child support payments

30. Military allotments

31. Workforce innovation opportunity act (WIOA) wages earned in work experience or on the-job training

32. Earned AmeriCorps income includes government payments from agricultural stabilization and conservation service and wages of AmeriCorps volunteers in service to America (vista) workers. Vista payments are excluded if the client was receiving CCCAP when they joined vista. If the client was not receiving CCCAP when they joined vista, the vista payments shall count as earned income.

33. CARES payments – refugee payments from Refugee Services

J. Income Exclusions

Each of the following are not considered countable income and are not taken into consideration for eligibility for child care.

1. Earnings of a child in the household when not a teen parent

2. Supplemental Security Income (SSI) under Title XVI

3. Any payment made from the Agent Orange Settlement Fund, pursuant to P.L. No. 101201

4. Nutrition related public assistance

    a. The value of Food Assistance benefits (SNAP)

    b. Benefits received under title VII, Nutrition Program for the Elderly, of The Older Americans Act (42 U.S.C. 3030A)

    c. The value of supplemental food assistance received under the Special Food Services Program for Children provided for in the National School Lunch Act and under the Child Nutrition Act

    d. Benefits received from the Special Supplemental Food Program for Women, Infants and Children (WIC)

5. Payments received under Title Il of the Uniform Relocation Assistance and Real Property Acquisition Policies Act

6. Experimental Housing Allowance Program (EHAP) payments made by HUD under Section 23 of the U.S. Housing Act

7. Payments made from Indian judgment funds and tribal funds held in trust by the Secretary of the Interior and/or distributed per capita

8. Distributions from a native corporation formed pursuant to the Alaska Native Claims Settlement Act (ANCSA)

9. Major disaster and emergency assistance provided to individuals and families, and comparable disaster assistance provided by states, local governments, and disaster assistance organizations

10. Payments received from the county or state for providing foster care, kinship care, or for an adoption subsidy

11. Payments to volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other program under Title I (VISTA) when the value of all such payments adjusted to reflect the number of hours such volunteers are serving is not equivalent to or greater than the minimum wage, and Title II and III of the Domestic Volunteer Services Act

12. Low-Income Energy Assistance Program (LEAP) benefits

13. Social security benefit payments and the accrued amount thereof to a recipient when an individual plan for self-care and/or self-support has been developed

14. Earned Income Tax Credit (EIC) payments

15. Monies received pursuant to the “Civil Liberties Act of 1988,” P.L. No. 100-383 (by eligible persons of Japanese ancestry or certain specified survivors, and certain eligible Aleuts)

16. Any grant or loan to any undergraduate student for educational purposes made or insured under any programs administered by the Commissioner of Education (Basic Educational Opportunity Grants, Supplementary Educational Opportunity Grants, National Direct Student Loans, and Guaranteed Student Loans); Pell Grant Program, the PLUS Program, the Byrd Honor Scholarship programs, and the College Work Study Program

17. Training allowances granted by Workforce Investment Act (WIA) to enable any individual, whether dependent child or caretaker relative, to participate in a training program are exempt

18. Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under the Youth Employment and Demonstration Project Act

19. Any portion of educational loans, scholarships, and grants obtained and used under conditions that preclude their use for current living costs and that are earmarked for education

20. Financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act that is made available for attendance costs. Attendance costs include: tuition, fees, rental or purchase of equipment, materials, supplies, transportation, dependent care and miscellaneous personal expenses

21. Any money received from the Radiation Exposure Compensation Trust Fund, pursuant to Public Law No. 101-426 as amended by Public Law No. 101-510

22. Resettlement and Placement (R & P) vendor payments for refugees

23. Supportive service payments under the Colorado Works Program

24. Home Care Allowance under adult categories of assistance

25. Loans from private individuals as well as commercial institutions

26. Public cash assistance grants including Old Age Pension (OAP), Aid to the Needy Disabled (AND), and Temporary Assistance to Needy Families (TANF)/Colorado Works

27. Reimbursements for expenses paid related to a settlement or lawsuit

28. Irregular income in the certification period that totals less than ninety dollars ($90) in any calendar quarter, such as slight fluctuations in regular monthly income and/or that which is received too infrequently or irregularly to be reasonably anticipated

29. Income received for participation in grant funded research studies on early childhood development

K. Income Adjustments

1. Verified court-ordered child support payments for children not living in the household shall be deducted prior to applying the monthly gross income to the maximum gross monthly income guidelines and when calculating parent fees. To qualify for the adjustment, the child support shall be:

    a. Court ordered and paid; and

b. For a current monthly support order (not including arrears).

2. In order to be considered verified:

a. There shall be verification that payments are court ordered and actually paid;

b. Court ordered payments deducted shall be for current child support payments; and

c. Such verification shall be made at the time of initial approval of eligibility for services and at the time of each re-determination of eligibility.

3.112 ADULT CARETAKER OR TEEN PARENT RESPONSIBILITIES

A. Primary adult caretaker(s) or teen parent(s) must sign the application/re-determination form along with providing verification of income to determine eligibility.

B. Adult caretaker(s) or teen parent(s) agree to pay the parent fee listed on the child care authorization notice and understand that it is due to the child care provider in the month that care is received.

C. Adult caretaker(s) or teen parent(s) must report and verify changes to income in writing within ten (10) calendar days of the change, only if the household's income exceeds eighty-five percent (85%) of the State median income. Also, if the adult caretaker(s) or teen parent(s) are no longer in their qualifying low-income eligible activity, this is considered to be a temporary cessation of activity and must be reported in writing within four (4) calendar weeks. This does not include a temporary break in low-income eligible activity such as a temporary job loss from the qualifying eligible activity or temporary change in participation in a training or education activity where the individual remains employed, self-employed, or enrolled in training or education. A temporary break includes but is not limited to:

1. Any interruption in work for a seasonal worker who is not working between regular industry work seasons;

2. Any temporary absence from low-income eligible activities including employment, self-employment, education, and/or training activity due to extended verified medical leave;

3. Any temporary absence from low-income eligible activities including employment, self-employment, education, and/or training activity due to verified maternity/paternity leave; or

4. Any temporary absence from an education or training activity due to holidays or scheduled breaks.

D. Adult caretaker(s) or teen parent(s) must provide the county department a copy of their child’s immunization record indicating that the child is age-appropriately immunized or have a religious or medical exemption for all children who receive child care from qualified exempt child care providers not related to the children, where care is provided outside of the child’s home, and the children are not school age. (see sections 25-4-902 and 25-4-908, C.R.S., for exemption requirements

E. Adult caretaker(s) or teen parent(s) must report changes in child care providers prior to the change.

F. All adult caretaker(s) or teen parent(s) must provide verification of their schedule related to their low-income eligible activity only at application and/or re-determination when non-traditional care hours are requested.

G. The primary adult caretaker(s) or teen parent(s) must verify citizenship status, age, and identity of the child(ren) for whom care is requested, in accordance with rule section 3.111I(2)(b). If the county determines that the adult caretaker or teen parent's declaration on the application or redetermination form is inconsistent, the adult caretaker or teen parent will be required to provide verification of what has been determined to be inconsistent.

H. When a child care case has closed and not more than thirty (30) days have passed from date of closure; the adult caretaker(s) or teen parent(s) may provide the verification needed to correct the reason for closure. If the household is determined to be eligible, services may resume as of the date the verification was received by the county, despite a gap in services. The adult caretaker(s) or teen parent(s) would be responsible for payment during the gap in service.

I. Adult caretaker(s) or teen parent(s) shall not share their individual attendance credentials with the child care provider at any time or they may be subject to disqualification per rule section 3.133(B).

J. Adult caretaker(s) or teen parent(s) must use the Attendance Tracking System (ATS) to check children in and out for the days of care authorized and attended unless the child care provider has been granted an exemption by the Department. Non-cooperation with the use of the ATS may result in case closure and/or non-payment of the child care benefits as defined by county policy.

3.113 LOW-INCOME CHILD CARE RE-DETERMINATION

A. The re-determination process shall be conducted no earlier than every twelve (12) months. The Department-prescribed re-determination form must be mailed to households at least forty-five (45) calendar-days prior to the re-determination due date. Adult caretaker(s) or teen parent(s) must complete and return to Child Care staff by the re-determination due date. Adult caretaker(s) or teen parent(s) who do not return eligibility re-determination forms and all required verification may not be eligible for child care benefits.

1. Employed and self-employed adult caretaker(s) or teen parent(s) shall submit documentation of the following:

a. Earned income

1) For ongoing employment, income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income if he/she chooses to do so if such verification more accurately reflects a household's current income level.

2) For employment that has begun or changed within the last sixty (60) days, a new employment verification letter may be used.

3) For self-employment income the adult caretaker or teen parent must submit documentation listing his/her income and verification of work-related expenses for the prior thirty (30) day period. On a case-by-case

basis, if the prior thirty (30) day period does not provide an accurate indication of anticipated income, a county can require verification of up to twelve (12) of the most recent months of income and expenses to determine a monthly average. An adult caretaker or teen parent may also provide verification of up to twelve (12) of the most recent months of income and expenses if he/she chooses to do so if such verification more accurately reflects a household's current income level. All expenses shall be verified or they will not be allowed.

b. Unearned income received during the prior thirty (30) day period must be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income if he/she chooses to do so if such verification more accurately reflects a household's current income level.

c. All adult caretaker(s) or teen parent(s) must provide verification of their schedule related to their low-income eligible activity only at application and/or redetermination and only when non-traditional care hours are requested.

d. At application and re-determination, adult caretakers or teen parents must self-declare that their liquid and non-liquid assets do not exceed one million dollars. If assets exceed one million dollars the household is ineligible for CCCAP.

2. Adult caretaker(s) or teen parent(s) in training must submit documentation from the training institution which verifies school schedule (only if reported at application or redetermination and non-traditional care hours are requested), and verifies current student status.

3. Adult caretaker(s) or teen parent(s) must provide the county department with up-to-date immunization records indicating age-appropriate immunizations or a religious or medical exemption age (see sections 25-4-902 and 25-4-908, C.R.S., for exemption requirements) for child(ren) who receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home and the child(ren) are not school.

4. If written documentation is not available at time of eligibility determination, verbal verification from collateral contacts such as the employer or other person issuing the payment may be obtained. Counties shall document the collateral contact verification in the case file to include the date that the information was received, who provided the information, and a contact phone number. Acceptable collateral contacts include but are not limited to:

   a. Employers;

   b. Landlords;

   c. Social/migrant service agencies; and

   d. Medical providers who can be expected to provide accurate third party verification.

B. Parent fees shall be reviewed at re-determination. An adjusted parent fee will be based on an average of at least the past thirty (30) days gross income or a best estimate of anticipated income in the event of new employment. Unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case a county can require evidence of up to twelve (12) of the most recent months of income. The adult caretaker(s) or teen parent(s) may also provide evidence of up to twelve (12) of the most recent months of income if they choose to do so if such evidence more accurately reflects the adult caretaker or teen parent's current income level. The fee change shall be effective the first full calendar month after the change is reported and verified, and timely written notice is provided.

C. For adult caretaker(s) or teen parent(s) whose children are enrolled in Head Start or Early Head Start, counties must extend re-determination of eligibility to annually coincide with the Head Start or Early Head Start program schedule. These households are still responsible for notifying the county of any changes that may impact eligibility.

3.114 TERMINATION OF LOW-INCOME CHILD CARE SERVICES

A. County departments must terminate child care authorizations and cases during the eligibility period for any of the following eligibility-related reasons:

1. Household income exceeds eighty-five percent (85%) of state median income as outlined in rule section 3.111(H)(2) during eligibility period;

2. Adult caretaker(s) or teen parent(s) is no longer a resident of the state;

3. Adult caretaker(s) or teen parent(s) is not involved in a low-income eligible activity and their job search period has expired;

4. Adult caretaker(s) or teen parent(s) who are employed or self-employed and do not meet federal minimum wage requirements outlined in rule section 3.111(G) are not considered to be in a low-income eligible activity;

5. If the child has had twenty-two (22) or more unexplained absences from authorized care within a thirty (30) day period and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made. The thirty (30) day period must account for temporary breaks or reported breaks in care; or

6. The adult caretaker(s) or teen parent(s) has been disqualified due to a founded Intentional Program Violation.

B. Child care authorizations and/or cases must be terminated for the following eligibility-related reasons at re-determination only:

1. Eligible child exceeds age limits;

2. Adult caretaker(s) or teen parent(s) did not pay parent fees, an acceptable payment schedule has not been worked out between the child care provider(s) and adult caretaker(s) or teen parent(s), or the adult caretaker(s) or teen parent(s) has/have not followed through with the payment schedule;

3. Adult caretaker(s) or teen parent(s) exceeds time limited low-income eligible activity time limits;

4. Adult caretaker(s) or teen parent(s) fails to comply with re-determination requirements;

5. Adult caretaker(s) or teen parent(s) is not participating in a low-income eligible activity;

6. Adult caretaker(s) or teen parent(s) has become a participant in Colorado Works;

7. Adult caretaker(s) or teen parent(s) did not submit required immunization records;

8. Adult caretaker(s) or teen parent(s) is/are no longer a resident of the county or state;

9. Adult caretaker(s) or teen parent(s) do not meet federal minimum wage requirement for employment or self-employment and are not considered to be in a low-income eligible activity;

10. Household income exceeds eighty-five percent (85%) of State median income as outlined in rule section 3.111(H)(1); or

11. If the child has had twenty-two (22) or more unexplained absences from authorized care within thirty (30) days of the re-determination date and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made. The thirty (30) day period must account for temporary breaks or reported breaks in care.

C. Reason for termination must be documented on the Department-prescribed closure form. A copy of the form must be mailed via postal service; emailed or delivered by other electronic delivery systems; faxed; or hand-delivered to the primary adult caretaker or teen parent and to the child care provider.

D. Upon termination from the child care program, the adult caretaker(s) or teen parent(s) will have thirty (30) days from the effective date of closure to correct or provide the information without having to reapply for benefits. Upon correcting or providing the information, eligibility will continue as of the date the missing information was provided to the county. Parent fees will be based on the previous amount specified until prior notice is provided of changes to future parent fees.

E. Nothing in this rule section shall preclude an adult caretaker(s) or teen parent(s) from voluntarily withdrawing from the Low-Income program.

3.115 COLORADO WORKS CHILD CARE

A. Adult caretakers or teen parents who are approved for Colorado Works and are determined work eligible per Colorado Works rule (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB) are eligible to receive Colorado Works Child Care for at least twelve (12) months unless the adult caretaker or teen parent has been determined eligible for transition to Low-Income Child Care prior to the end of the twelve (12) month period.

B. The Department-prescribed Colorado Works Child Care Referral Form shall be completed by the county Colorado Works worker and provided to the county child care technician to process in CHATS within five (5) business days of receipt and maintained in the child care case file as follows:

1. When a household is determined eligible for Colorado Works Child Care;

2. When there are changes in household composition;

3. To continue care beyond the end of each twelve (12) month period;

4. When a household is no longer eligible for Colorado Works, at which time the household shall be transitioned to Low-Income Child Care per rule section 3.117; and/or

5. When a household's Colorado Works case is transitioned to another county.

C. Adult caretakers or teen parents that are not determined work eligible per Colorado Works rule (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB), who are caring for children who are receiving basic cash assistance through the Colorado Works Program may be eligible for Low-Income Child Care if the adult caretaker or teen parent is not a part of the Colorado Works assistance unit and they meets all other low-income program criteria.

3.116 ELIGIBILITY FOR COLORADO WORKS CHILD CARE

A. Adult caretakers or teen parents that have been determined eligible for Colorado Works, have entered into a current individualized plan, are participating in allowable work activities as defined in Colorado Works rules (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB), and have been referred for child care by the county Colorado Works worker will be considered to be participating in an eligible activity and must receive Colorado Works Child Care for at least twelve (12) months unless the adult caretaker or teen parent transitions to Low-Income Child Care prior to the end of the twelve (12) month period.

B. Colorado Works Child Care cases must be authorized for a minimum of twelve (12) months based on the child's need for care.

C. Upon receipt of a referral at the following times, only earned income that is reported and verified by the county Colorado Works worker will be considered countable income for Colorado Works Child Care cases:

1. When a household is initially determined eligible for Colorado Works Child Care; and/or

2. When care is continued beyond the end of each twelve (12) month period.

D. The child care schedule shall be determined and shared by the county Colorado Works worker on the Department-prescribed Colorado Works Child Care Referral Form.

E. County residency shall be verified by the county Colorado Works Program.

F. Citizenship, age, and identity of the child(ren) for whom care is requested are verified by the county Colorado Works Program. The Colorado Works Child Care Referral serves as verification of citizenship, age, and identity, for CCCAP eligibility and the referral must be maintained in the child care case file.

G. Verification of immunization or religious or medical exemption (see sections 25-4-902 and 25-4-908, C.R.S., for exemption requirements) must be provided to the child care technician for child(ren) who receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home and the child(ren) are not school age . The immunization verification must be maintained in the child care case file.

H. Counties that provide Colorado Works Child Care for households approved for Colorado Works state diversions require the same eligibility as outlined in this rule section.

I. The county Colorado Works worker must notify the child care technician in writing of changes to the level of child care services. Decreases in child care services must only be acted upon if it is at the request of the adult caretaker or teen parent. If the county Colorado Works worker processes the child care case, written verification is not required but changes must be clearly documented in CHATS.

J. The adult caretaker or teen parent or the county Colorado Works worker must report a change in child care provider to the child care technician prior to the change.

K. The county child care technician must advise adult caretaker(s) or teen parent(s) who are receiving Colorado Works Child Care of their responsibilities in writing via the Department's Client Responsibilities Agreement at the time of the initial referral.

L. If the adult caretaker or teen parent moves out of the county in which they are actively receiving Colorado Works Child Care during the twelve (12) month period:

1. The originating county child care staff shall notify the receiving county within ten (10) business days of being notified that the adult caretaker or teen parent has moved.

2. Upon receipt of notification from the originating county, the receiving county shall, at a minimum, initiate or maintain the Colorado Works Child Care case for the remainder of the twelve (12) month period.

3.117 TRANSITION OFF COLORADO WORKS CHILD CARE

Counties shall transition households that are no longer eligible for the Colorado Works Program and are participating in a low-income eligible activity as defined in rule section 3.103(NN) to Low-Income Child Care without requiring the household to complete the low-income child care application. The household's eligibility shall be re-determined no earlier than twelve (12) months after the transition as outlined in rule section 3.113.

A. A household that is no longer eligible for the Colorado Works Program shall not be automatically transitioned to Low-Income Child Care if any of the following conditions apply. If a household is not transitioned to Low-Income Child Care for any of the conditions below, the county shall provide timely written notice to the primary adult caretaker or teen parent.

1. The household is ineligible for the Colorado Works Program due to an Intentional Program Violation (IPV) as determined in Colorado Works rule (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB);

2. The household is ineligible for the Colorado Works Program and will be at an income level that exceeds eighty-five percent (85%) of the State Median Income (SMI) as outlined in rule section 3.111(H)(1); or

3. If the child has had twenty-two (22) or more unexplained absences from authorized care within the last thirty (30) days prior to the household being determined ineligible for Colorado Works and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made within the thirty (30) day period.

B. Households shall be determined eligible to transition to Low-Income Child Care based on the information and verification that is provided to the child care technician by the county Colorado Works worker upon receipt of the Department-prescribed Colorado Works Child Care Referral Form. No additional verification shall be required until the household's twelve (12) month re-determination for Low-Income Child Care. Child citizenship status, age, and identity must not be re-verified at the time of the Low-Income Child Care re-determination if it was previously verified using the Colorado Works Child Care Referral Form.

C. If a household becomes ineligible for Colorado Works while in a low-income eligible activity other than job search as defined in rule section 3.103(NNN), the adult caretaker or teen parent shall be transitioned to Low-Income Child Care. The household's eligibility shall be re-determined no earlier than twelve (12) months after the transition as outlined in rule section 3.113.

D. If a household becomes ineligible for Colorado Works while participating in a job search activity or is not in a low-income eligible activity as defined in rule section 3.103(OO), the adult caretaker or teen parent shall be transitioned to Low-Income Child Care and entered into the Low-Income Job Search activity for a minimum of thirteen (13) weeks.

E. If the county Colorado Works worker reports an increase in household income at the time of transition to Low-Income Child Care, the county child care technician shall document the income increase in case comments but shall not act upon the change until the household's twelve (12) month re-determination for Low-Income Child Care.

F. Parent fees for households that transition from Colorado Works to Low-Income Child Care must not be assessed higher than what was determined at the most recent Colorado Works Child Care referral. Parent fee revisions for child care during the twelve (12) month period may occur as outlined in rule section 3.124(B).

G. Households that transition from Colorado Works to Low-Income Child Care must be authorized for a minimum of twelve (12) months based on the child's need for care as long as the family remains eligible for the Low-Income Child Care program.

H. Households that transition from Colorado Works to Low-Income Child Care are subject to the Low-Income Child Care requirements outlined in rule section 3.110.

I. County child care staff shall advise adult caretaker(s) or teen parent(s) that are transitioned from Colorado Works to Low-Income Child Care of their responsibilities in writing via the Department's Client Responsibilities Agreement at the time of transition.

J. If at any time after being transitioned onto Low-Income Child Care the household is determined eligible for Colorado Works, re-enters into a current individualized plan, and is participating in an allowable work activity as defined in Colorado Works rule (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB), the household shall be transitioned back onto Colorado Works Child Care upon receipt of the Colorado Works Child Care Referral Form.

3.118 PROTECTIVE SERVICES CHILD CARE

A. Protective services households refers to households in which child(ren) have been placed by the county in foster home care, kinship foster home care, or non-certified kinship care, and have an open child welfare case. At the option of the county, the county may provide protective services child care utilizing Child Care Development Funds (CCDF) rather than Child Welfare funds.

B. The county worker must authorize protective services cases for a minimum of twelve (12) months based on the child's need for care and the funding source.

C. Protective services child care is not twenty-four (24) hour care.

D. Child care services for school-age children during regular school hours shall be different from, and cannot be substituted for, educational services that school districts are required to provide under the Colorado Exceptional Children's Educational Act.

E. The Department-approved Protective Services Child Care Referral Form shall be completed by the county Child Welfare worker and provided to the county child care technician to process in CHATS within five (5) business days of receipt and maintained in the child care case file when any of the following occur:

1. A household is determined eligible for Protective Services Child Care;

2. There are changes in household composition that affect eligibility or the need for Protective Services Child Care;

3. There are changes in the child care schedule;

4. To continue care; or

5. A household is no longer eligible for or in need of Protective Services Child Care.

3.119 ELIGIBILITY FOR PROTECTIVE SERVICES HOUSEHOLDS (COUNTY OPTION)

A. Protective services households are considered a household of one for purposes of determining income eligibility. The only countable income for a protective services household is the income that is received by the child(ren) that have been placed in kinship or foster care. Child support income shall not be included as income. Child support income is intercepted by the county child welfare department.

B. Protective services households shall be allowed up to sixty (60) days to provide verification of the child(ren)'s income.

C. As determined by the Child Welfare worker, the income requirement for protective services households may be waived on a case-by-case basis. If the income requirement is waived, it must be documented in the child care case file.

D. Protective services households are not subject to low-income eligible activity requirements.

E. Protective services households are not subject to residency verification requirements. The county with the open child welfare case shall be considered the county of residency.

F. Citizenship, age, and identity shall be verified by the Child Welfare worker. The signed Protective Services Child Care Referral serves as verification of citizenship, age, and identity and must be maintained in the child care case file. If the Child Welfare worker is unable to attest to having verified the child's citizenship status, age, and/or identity at the time of referral:

1. Protective services households must be allowed up to six (6) months to provide verification of the child(ren)'s U.S. citizenship status and age;

2. Protective services households must be allowed up to six (6) months to provide verification of the child(ren)'s identity; and,

3. If the Child Welfare worker cannot verify and attest to the child's citizenship status, age, or identity within six (6) months of the referral, the county must not provide child care services for the child(ren) through the use of Protective Services Child Care.

G. Protective services households must be allowed up to sixty (60) days to provide verification of immunization or religious or medical exemption (see sections 25-4-902 and 25-4-908, C.R.S., for exemption requirements) if child care is provided by a qualified exempt child care provider not related to the child where care is provided outside of the home.

H. If the child(ren) on the Protective Services Child Care case receives care from a licensed child care provider, the county may reimburse the child care provider for additional absences and/or holidays beyond what would be paid for a Low-Income, Colorado Works, or Child Welfare Child Care case. The number of additional absences shall be paid in accordance with the Protective Services Child Care policy set by the county and approved by the Department.

3.120 CHILD WELFARE CHILD CARE

A. Child Welfare Child Care is used as a temporary service to maintain children in their own homes or in the least restrictive out-of-home care setting when there are no other child care options available. This may include parents, non-certified kinship care, kinship foster care homes, and foster care homes.

B. Child Welfare Child Care is not twenty-four (24) hour care.

C. Child care services for school-age children during regular school hours shall be different from, and cannot be substituted for, educational services that school districts are required to provide under the Colorado Exceptional Children's Educational Act.

D. Eligibility for Child Welfare Child Care is determined on a case-by-case basis by the Child Welfare division using the criteria outlined in Colorado Department of Human Services rules at 12 CCR 2509-4, rule section 7.302 (July 31, 2023), herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the Colorado Department of Human Services, 1575 Sherman St., Denver, Colorado 80203, or at https://www.sos.state.co.us/ccr. These regulations are also available for inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash Street, Bldg. C, Denver, Colorado 80246, during regular business hours.

E. Child Welfare Child Care households are not subject to residency verification requirements. The county with the open child welfare case shall be considered the county of residency.

F. The county shall not provide Child Welfare Child Care utilizing the Child Care Development Fund.

3.121 ELIGIBILITY FOR FAMILIES EXPERIENCING HOMELESSNESS

A. Households shall meet the definition of families experiencing homelessness in rule section 3.103(XX), above.

B. Households that meet the definition of “families experiencing homelessness” must be provided a child care authorization during a stabilization period of at least sixty (60) consecutive calendar days, within a twelve (12) month period, to allow the household the opportunity to submit verification for ongoing child care benefits.

1. If verifications necessary to determine ongoing eligibility are received by the county within the stabilization period, the household will continue to receive subsidized child care. If verifications necessary to determine ongoing eligibility are not received by the county within the stabilization period, the household will be determined ineligible and given timely written notice of adverse action.

2. Subsidized care provided during the stabilization period is considered non-recoverable by the county unless fraud has been established.

3. Eligible activity

    a. The adult caretaker(s) or teen parent(s) is not required to participate in a low-income eligible activity during the stabilization period.

    b. If the adult caretaker(s) or teen parent(s) is participating in a low-income eligible activity, they will have at least sixty (60) days to provide necessary verification.

4. Residency

a. The adult caretaker(s) or teen parent(s) shall self-declare residency during the stabilization period by providing the location they are temporarily residing. Counties shall identify the zip code of this location in CHATS.

b. The adult caretaker(s) or teen parent(s) may provide a mailing address or the county shall use general delivery or the county office address for client correspondence.

5. The adult caretaker(s) or teen parent(s) may self-declare citizenship, age, and identity of the child(ren) during the stabilization period.

a. A child's citizenship status, age, and identity are considered verified at the end of the stabilization period if the complete application includes the child's age and citizenship status and is signed attesting to the child's identity unless the county determines that the declaration of citizenship, age, and/or identity is inconsistent.

b. The county must request additional verification at the end of the stabilization period if the adult caretaker or teen parent's declaration is determined to be inconsistent based on the following guidelines:

1) If the claim of citizenship, age, and/or identity is inconsistent with statements made by the adult caretaker or teen parent, or with other information on the application, or on previous applications;

2) If the claim of citizenship, age, and/or identity is inconsistent with the documentation provided by the adult caretaker or teen parent; and/or,

3) If the claim of citizenship, age, and/or identity was previously received from another source such as another public assistance program including Colorado Works, the Supplemental Nutrition Assistance Program (SNAP), or Medicaid, and the claim is inconsistent with the information previously received from that source.

6. If child care is provided by a qualified exempt child care provider not related to the child where care is provided outside of the home, the requirement to provide the county with verification of immunization status shall not be required during the stabilization period.

CHILD CARE ASSISTANCE PROGRAM WAIT LISTS AND ENROLLMENT FREEZES

3.122 WAIT LISTS

A. A county may apply to the Department to implement a wait list when:

1. Department-generated projections indicate that a county's allocation will be at least eighty-five percent (85%) expended by the end of the fiscal year; or

2. A county is able to demonstrate a fiscal need that includes factors that are not accounted for in the Department-generated projections for county CCAP expenditures, such as, but not limited to, drastic economic changes.

B. Once approved, counties shall maintain a current and accurate wait list in CHATS of adult caretakers and teen parents who have applied for the CCCAP program.

1. Counties shall require families to complete a Low-Income Child Care application in its entirety and enroll eligible adult caretakers and teen parents from wait lists according to the following Department-defined target populations:

    a. Households whose income is at or below 130% of the current federal poverty level;

    b. Children with additional care needs; and

    c. Families experiencing homelessness.

2. Counties may prioritize enrollment for teen parents or other segments of populations that are defined by the county based on local needs.

3.123 ENROLLMENT FREEZES

A. A county may apply to the Department to implement a freeze when:

1. Department-generated projections indicate that a county's allocation will be at least ninety-five percent (95%) expended by the end of the fiscal year; or

2. A county is able to demonstrate a fiscal need that includes factors that are not accounted for in the Department-generated projections for county CCCAP expenditures, such as, but not limited to, drastic economic changes.

B. Counties that have been approved to implement a freeze shall add adult caretakers and teen parents into CHATS if they are likely to be found eligible based on self-reported income and job, education, job search, or workforce training activity. Counties shall require an applicant to restate their intention to be kept on the freeze every six (6) months in order to maintain their place on the list.

1. Counties shall enroll eligible adult caretakers and teen parents once a freeze is lifted according to the following Department-defined target populations:

    a. Households whose income is at or below 130% of the current federal poverty level;

    b. Children with additional care needs; and

    c. Families experiencing homelessness.

2. Once a freeze is lifted, counties may prioritize enrollment for teen parents or other segments of populations that are defined by the county based on local needs.

3.124 PARENT FEES

A. Parent fees are based on gross countable income for the child care household compared to the household size, taking the number of children in care into account. Parent fees must be calculated in whole dollars by dropping the cents. Counties must provide families with written notice of their parent fee at the time of Colorado Works Child Care referral; low-income application or re-determination; or when a reduction/increase of household parent fee occurs.

B. Parent fee revisions for Low-Income and Colorado Works Child Care during the twelve (12) month eligibility period may occur under the below circumstances. Increases in parent fees beyond what is outlined in rule subsections (1)-(4) below shall only go into effect at Low-Income

Child Care re-determination or at the end of the twelve (12) month Colorado Works Child Care period.

1. The adult caretaker or teen parent, who was initially determined eligible with countable income, regains income after a temporary loss of income;

2. A change has been reported that results in a decrease in the parent fee for the household;

3. There is an increase or decrease in the amount of care that is authorized and the increase in authorization is not due to the addition of a household member; or

4. The household begins or ceases utilization of care at a high-quality child care provider.

C. During the twelve (12) month eligibility period the household parent fee cannot be assessed higher than the parent fee determined at the most recent Colorado Works Child Care referral or low-income application or re-determination.

D. Parent fees for Low-Income Child Care cases must be reviewed at re-determination. An adjusted parent fee will be based on an average of at least the past thirty (30) days gross income or a best estimate of anticipated income in the event of new employment or a change in the adult caretaker(s)' or teen parent(s)' regular monthly income. Unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case a county can require evidence of up to twelve (12) of the most recent months of income. The adult caretaker(s) or teen parent(s) may also provide evidence of up to twelve (12) of the most recent months of income if they choose to do so if such evidence more accurately reflects the adult caretaker's current income level. Income may be divided by a weekly amount then multiplied by 4.33 to arrive at a monthly average for parent fee calculations.

E. Colorado Works households in a paid employment activity shall pay parent fees based on gross countable income as verified and shared by the local Colorado Works program.

F. Parent fees for Colorado Works Child Care cases shall be reviewed at the end of the household's twelve (12) month eligibility period. An adjusted parent fee shall be based on gross countable income as verified and shared by the local Colorado Works Program.

G. A county may waive the parent fee for a Low-Income or Colorado Works Child Care household that has a child that is dually enrolled in a Head Start or Early Head Start Program.

H. For a Low-Income or Colorado Works Child Care household utilizing a child care provider in the top three levels of the Department's quality rating system, the parent fee shall be reduced by twenty percent (20%) of the regularly calculated parent fee. For households utilizing multiple child care providers, only one child care provider is required to be in the top three quality levels for the reduced parent fee to apply.

I. All adult caretakers and teen parents are required to pay the parent fee as determined by the formula listed in rule section 3.124(P), except in the following cases:

1. When one or two teen parent households who are in middle/junior high, high school, GED, or vocational/technical training activity and payment of a fee produces a hardship, the parent fee may be waived entirely and documented in the case file. The parent fee waiver shall be reviewed during each re-determination.

2. The Low-Income or Colorado Works Child Care household is eligible for a reduced parent fee based on the quality level of the child care provider.

3. Colorado Works households where the adult caretaker or teen parent has entered into a current individualized plan and is participating in an allowable work activity as defined in Colorado Works rule (9 CCR 2503-6), incorporated by reference in rule section 3.103(BB), above, other than paid employment, shall not have a parent fee.

4. Child Welfare Child Care households as defined in the Social Services rule manual, rule section 7.302 (12 CCR 2509-4), incorporated by reference in rule section 3.103 (X), above, shall not have a parent fee.

5. Families Experiencing Homelessness as defined in rule section 3.121 shall not have a parent fee during the stabilization period.

6. Protective service households as defined in rule section 3.118 shall not have a parent fee unless the child(ren) has countable income.

7. Families that have no income shall have no parent fee.

8. Effective April 1, 2020, parent fees, as assessed by the parent fee formula, may be waived in the event of a declared state or local disaster or emergency for up to twelve (12) months for households impacted by such disaster or emergency. The county shall document the decision to waive the parent fee and the amount of time the parent fee will be waived in the case record in the Child Care Automated Tracking System (CHATS).

J. The initial or revised parent fee shall be effective the first full calendar month after the end of the timely written notice period unless the revision results in a decrease to the parent fee. A parent fee shall not be assessed or changed retroactively unless in the event of an emergency or disaster as outlined in rule section 3.124(H)(8), and, under those circumstances a county may only retroactively waive the parent fee to the beginning of the current month.

K. The fee must be paid in the month that care is received and shall be paid by the parent directly to the child care provider(s). Parent fees are used as the first dollars paid for care. The counties or their designee shall not be liable for the fee payment.

L. When more than one child care provider is being used by the same household, child care staff shall designate to whom the adult caretaker(s) or teen parent(s) pays a fee or in what proportion the fee shall be split between child care providers. The full parent fee shall be paid each month, but parent fees shall not exceed the reimbursement rate by CCCAP. The adult caretaker(s) or teen parent(s) shall determine if it is most beneficial to close their CCCAP case if the parent fee exceeds the cost of care.

M. Adult caretakers or teen parents will be informed of their responsibilities related to fee payment on their signed application form or via the Client Responsibilities Agreement that is provided to them at the initial Colorado Works referral or at the time of transition from Colorado Works to Low-Income Child Care.

N. Loss of eligibility for child care benefits may occur at re-determination or at the end of the twelve (12) month Colorado Works Child Care Period if the adult caretaker(s) or teen parents do not pay their parent fees; do not make acceptable payment arrangements with the child care providers; or do not follow through with the arrangements during the twelve (12) month eligibility period. Notice of termination for such loss of eligibility shall be given in accordance with rule section 3.114. Child care providers shall report nonpayment of parent fees no later than sixty (60) calendar-days after the end of the month following the month the parent fees are due unless county policy requires it earlier. If a household's benefits are terminated at re-determination for non-payment of parent fees, that household will remain ineligible until:

1. Delinquent parent fees are paid in full;

2. Adequate payment arrangements are made with the child care provider to whom the fees are owed and an agreement is signed by both parties; or

3. County determination of verified good faith efforts to make payment to the child care provider(s), when the client was unable to locate the child care provider(s).

O. The adult caretaker(s) or teen parent(s) and child care provider(s) shall be given timely written notice of the parent fee amount, on the child care notice of authorization, at least fifteen (15) calendar-days prior to the first of the month the parent fee is effective.

P. Beginning July 1, 2021, through September 30, 2024, the county must assess parent fees based upon a marginal rate increase of fourteen percent (14%) for every dollar of gross countable household income above one hundred percent (100%) of the federal poverty guidelines (FPG) outlined in rule section 3.111(H)(2).

1. The county must assess a parent fee of one percent (1%) of gross income to eligible households with gross income that is at or below one hundred percent (100%) of the FPG.

2. For eligible households with gross income that is above one hundred percent (100%) of the FPG, the county must assess a parent fee at one percent (1%) of their income plus a marginal rate increase of fourteen percent (14%) for every dollar of gross countable household income above one hundred percent (100%) of the FPG.

3. An additional fifteen-dollar ($15) fee shall be added to the parent fee for each additional child when households are requesting care for more than one (1) child and have income above one hundred percent (100%) of the FPG. If care is only requested for one (1) child, the additional fifteen-dollar ($15) fee does not apply.

Q. Counties shall use the FPG and state median income limit as defined in rule section 3.111(H)(2). Counties shall update parent fees at the next scheduled re-determination according to the parent fee formula table outlined in rule section 3.124(P), in effect on the date of redetermination.

R. Parent fees, as assessed by the parent fee formula, may be reduced to five dollars ($5) for hardship reasons for up to six (6) months per hardship award. The county director or his/her designee shall approve fee reductions and a written justification placed in the case file and noted in the case record in the Child Care Automated Tracking System (CHATS). Any hardship award may be extended so long as justification for extending the hardship award exists.

S. The Department shall notify counties at the beginning of each federal fiscal year of the current FPG and State Median Income limit as outlined in rule section 3.111(H)(2). Counties shall update parent fees at the next scheduled re-determination or at the end of the twelve (12) month Colorado Works Child Care Period.

T. When all children in a household are in part-time care, the parent fee shall be assessed at fifty-five percent (55%) of the above-calculated fee. Part-time care is defined as an average of less than thirteen (13) full-time equivalent units of care per month.

U. When parent fees fluctuate between part-time and full-time, due to the authorized care schedule, the parent fee should be assessed at the lower rate if the majority of the months in the twelve (12) month eligibility period calculate to part-time care.

V. Children enrolled in grades one (1) through twelve (12) that are authorized for part-time care during the school year must have a part-time parent fee.

W. One or two teen parent households for whom payment of a parent fee produces a hardship may have their fee waived entirely. The parent fee waiver shall be documented in the case file and reviewed during each subsequent re-determination.

3.125 COUNTY RESPONSIBILITIES

A. Counties shall administer CCCAP in compliance with Department fiscal and program regulations and in accordance with the terms associated with their allocation. Counties will be allocated child care funds annually.

B. Counties or their designee shall establish administrative controls to ensure appropriate internal controls and separation of duties (this means that the same employee shall not authorize and process payment for child care services). If these administrative controls create a hardship for the county, the county shall submit a waiver request and an internal county policy to the Department for approval. In no event will the Department approve a waiver of controls specified in federal or state statute or regulation/rule.

C. Counties must use the forms required by the Department. Counties may add additional language to Department forms but shall not remove language. This does not include the Low-Income Child Care application or re-determination. All changes to Department forms shall be submitted to and approved by the Department prior to use.

D. Counties shall respond to requests from the Department within two (2) business days.

E. Counties shall make reasonable efforts to advise county residents of services available to target groups through press releases, presentations, pamphlets, and other mass media.

F. Counties must use CHATS to administer CCCAP. Counties who do not use CHATS as prescribed by the Department may not be reimbursed.

G. Counties shall establish controls over which county staff have the authority to override eligibility in CHATS. All overrides of eligibility shall be accompanied by documentation in CHATS.

H. Counties must document in CHATS actions and contacts made under the appropriate comment screen, within two (2) business days of case action or contact.

I. Counties must code child care expenditures to the appropriate program, as prescribed by the Department. Failure to do so may result in non-reimbursement or other actions as deemed appropriate by the Department.

J. Counties shall monitor expenditures of Child Care funds and may suspend enrollments, as necessary, to prevent over-expenditures in child care. “Reimbursable expenditures” are supported in whole or in part by the State General Fund, Federal (pass through) money, or a combination of State and Federal money.

K. Counties shall be responsible for the provision of a safe place for storage of case records and other confidential material to prevent disclosure by accident or as a result of unauthorized persons other than those involved in the administration of the CCCAP program. Data of any form shall be retained for the current year, plus the three (3) immediately preceding years, unless:

1. A statute, rule or regulation, or generally applicable policy issued by a county, state or federal agency that requires a longer retention period; or

2. There has been a recovery, audit, negotiation, litigation or other action started before the expiration of the three (3)year period.

3. If a county shares building space with other county offices, it shall use locked files to store case material and instruct facility and other maintenance personnel concerning the confidential nature of information.

L. Counties shall post eligibility, authorization, and administration policies and procedures so they are easily accessible and readable to the layperson. The policies shall be sent to the Department for compilation.

M. Counties shall provide consumer education to adult caretakers, teen parents, child care providers and the general public as required by the Department including but not limited to:

1. Information on all available types of child care providers in the community: centers, family child care homes, qualified exempt child care providers and in-home child care.

2. Information regarding voter registration.

3. Information on family support services including but not limited to:

a. Colorado Works;

b. Head Start and Early Head Start;

c. Low-Income Energy Assistance Program (LEAP);

d. Food Assistance program (SNAP);

e. Women, Infants and Children (WIC) program;

f. Child and Adult Care Food program (CACFP);

g. Medicaid And State Children's Health Insurance Program;

h. Housing Information;

i. Individuals with Disabilities Education Act (IDEA) programs and services; and

j. Child Support Services.

4. Counties shall also provide information and referrals to services under early and periodic screening, diagnosis, and treatment (EPSDT) under Medicaid and Part C of IDEA 34 CFR Part 300 (April 2023). Herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202, or at https://www.ecfr.gov. These regulations are also available for inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash Street, Bldg. C, Denver, Colorado 80246, during regular business hours.

5. Counties shall collect information on adult caretaker(s) or teen parent(s) receiving programs services listed in rule section 3.125(M)(3)-(4) via the Low-Income Child Care application and shall enter the information into CHATS for reporting purposes.

N. Once determined eligible for Low-Income Child Care, households should remain eligible for a minimum of twelve (12) months. Counties shall not discontinue child care services prior to a household's next eligibility re-determination unless:

1. The household's income exceeds eighty-five percent (85%) of the State Median Income;

2. The adult caretaker(s) or teen parent(s) is no longer in a qualifying low-income eligible activity for the reasons that do not constitute a temporary break as defined in rule section 3.112(C);

3. The adult caretaker(s) or teen parent(s) no longer reside(s) in the state;

4. The adult caretaker(s) or teen parent(s) who are employed or self-employed and do not meet federal minimum wage requirements outlined in rule section 3.111(G) are not considered to be in a low-income eligible activity;

5. If the child has had twenty-two (22) or more unexplained absences from authorized care within a thirty (30) day period and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made. The thirty (30) day period must account for temporary breaks or reported breaks in care; or

6. The adult caretaker(s) or teen parent(s) has been disqualified due to a founded Intentional Program Violation.

O. Counties shall provide written wait list and freeze policies to the Department for review and approval at the time of county plan submission. Approved county CCCAP plans can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families

P. Counties shall maintain a current and accurate wait list in CHATS of adult caretakers and teen parents who have applied for the CCCAP program.

Q. Counties shall review current applications for completeness, approve or deny the application, and provide timely written notice to the adult caretaker(s) or teen parent(s) of approval, or of missing verifications, no more than fifteen (15) calendar-days from the date the application was received by the county. Applications are valid for a period of sixty (60) calendar-days from the application date.

1. If verifications are not received within the fifteen (15) day noticing period the application will be denied.

2. If verification is received within sixty (60) calendar-days of the application date, counties will determine eligibility from the date the current verification was received if the eligibility criteria are met.

3. If verification has not been completely submitted within sixty (60) calendar-days of the application date then the county shall require a new application.

R. Upon review of an application that was directed to the wrong county of residence, the receiving county shall forward the application and any verification within one (1) business day to the correct county. The county shall provide notification to the adult caretaker(s) or teen parent(s) that their application has been forwarded to the correct county.

S. Counties may access information already available on file or through system interfaces from other assistance programs within their county to use in child care eligibility determination at application

and/or re-determination. Counties shall place a copy of this verification in the case file and/or make a notation in CHATS regarding the verification as appropriate.

T. Counties shall obtain verification immunization record to the county, indicating that the children are age-appropriately immunized or have a religious or medical exemption (see sections 25-4-902 and 25-4-908, C.R.S., for exemption requirements)for children who receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home, and the child(ren) are not school age at application and re-determination.

U. Counties are encouraged to use collateral contact whenever possible to verify information needed to determine eligibility, not including citizenship, age, and identity.

V. Counties must use preponderance of evidence when verifying a child's citizenship status, age, and identity at application and/or re-determination, only requiring additional verification if the adult caretaker or teen parent's declaration is inconsistent according to the following guidelines:

1. If the claim of citizenship, age, and/or identity is inconsistent with statements made by the adult caretaker or teen parent, or with other information on the application/redetermination, or on previous applications/re-determinations;

2. If the claim of citizenship, age, and/or identity is inconsistent with the documentation provided by the adult caretaker or teen parent; and/or

3. If the claim of citizenship, age, and/or identity was previously received from another source such as another public assistance program including Colorado Works, the Supplemental Nutrition Assistance Program (SNAP), or Medicaid, and the claim is inconsistent with the information previously received from that source.

W. Counties shall not require Social Security Numbers or cards for household members who apply for child care assistance.

X. Counties must use the prudent person principle (PPP) to benefit families and child care providers when determining eligibility, authorizing care, entering into a fiscal agreement, and reimbursing child care providers for care that was not automatically processed through CHATS. An explanation of why and how the county used PPP must be documented in the appropriate notes section(s) of CHATS.

Y. Counties or their designee shall verify the residence of any adult caretaker(s) or teen parent(s) receiving or applying for Low-Income Child Care assistance to ensure that they live in the county where they are applying for assistance at the time of application or re-determination. For families experiencing homelessness, refer to rule section 3.121.

1. Verification of address may include but is not limited to:

a. Rent receipt/lease;

b. Mortgage statement;

c. Utility or other bill mailed no more than two (2) months previously;

d. Voter registration;

e. Automobile registration;

f. A statement from the person who leases/owns the property;

g. Documentation from schools such as verification of enrollment, report card, or official transcript mailed no more than two (2) months previously;

h. Official correspondence from any other government agency (e.g., IRS) mailed within the past two (2) months;

i. A statement from another department in your agency if they have verified the residence (e.g., Child Welfare, collateral contact); or

j. Paycheck stub received within the past two months.

2. If the county of residence is questionable, a secondary means of verification may be requested such as but not limited to:

a. Records from the local county clerk and recorder's office; or

b. Records from the local county assessor's office.

Z. County child care staff shall advise low-income adult caretaker(s) or teen parent(s) of their responsibilities in writing at application and re-determination. Information that adult caretaker(s) or teen parent(s) must report during the twelve (12) month eligibility period as follows:

1. Changes to income, if the household's income exceeds eighty-five percent (85%) of the State median income shall be reported within ten (10) calendar-days of the change.

2. Changes to an adult caretaker(s) or teen parent's qualifying low-income eligible activity, which does not qualify as a temporary break as defined in rule section 3.112(C), must be reported within four (4) calendar weeks.

AA. Counties shall process any reported change and/or required verification within ten (10) calendar days of receiving the information using the following guidelines:

1. Changes reported during the twelve (12) month low-income eligibility period requiring immediate action:

a. Changes to income, if the household's income exceeds eighty-five percent (85%) of the state median income;

b. Changes to an adult caretaker or teen parent's qualifying low-income eligibility activity, which does not qualify as a temporary break as defined in rule section 3.112(C);

c. Changes in parent fee per rule section 3.121

d. Changes in state residency; and

e. Changes that are beneficial to the household such as, but not limited to:

1) An increase in authorized care;

2) A change of child care provider;

3) Change in household composition due to an additional child requesting care; and

4) Change in mailing address.

2. Changes outside of the above guidelines should be documented in CHATS but shall not be acted upon until the adult caretaker or teen parent's re-determination.

BB. If the adult caretaker(s) or teen parent(s) moves out of the county in which they are actively receiving Low-Income Child Care assistance benefits during the twelve (12) month eligibility period; remains below eighty-five percent (85%) of the state median income; and, remains in a low-income eligible activity as defined in the originating county's county plan, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families ,the originating county shall maintain the case, authorization(s), and fiscal responsibility until the re-determination date that was previously determined;

1. The originating county shall be responsible for initiating and/or maintaining the fiscal agreement for the child care provider that the family utilizes for care in accordance with rule section 3.134 for the remainder of the twelve (12) month eligibility period. If the originating county does not have an active fiscal agreement with the chosen child care provider at the time of exit, the child care provider's fiscal agreement shall be entered using the county ceiling rates of the county in which the provider is located.

2. At the time of re-determination, the receiving county shall re-determine the household's eligibility per rule section 3.113 without requiring the household to re-apply.at the time of re-determination the originating county shall issue the eligibility re-determination form to the household per rule section 3.113 and direct the family to return the completed form to the receiving county. To mitigate service interruptions, the originating county shall notify the receiving county of the re-determination and their responsibilities of redetermining eligibility.

3. The child care case may be closed if at the time of re-determination the family does not meet the eligible activity requirements of the receiving county.

4. If the receiving county has a wait list at the time of re-determination, a family may be placed onto that county's wait list provided they are not a part of the county defined target populations.

CC. Counties shall respond to requests for information or assistance from other agencies within five (5) business days.

DD. Counties must review and take action on current re-determinations by reviewing for completeness; approving or denning the re-determination; and providing timely written notice to the adult caretaker(s) or teen parent(s) of approval, or of missing verifications, no more than fifteen (15) calendar days from the date the re-determination was received by the county. The county must notify the adult caretaker(s) or teen parent(s) in writing that they have fifteen (15) calendar days from the date the notice is mailed to provide the required missing verifications. If verifications are not received within the fifteen (15) day noticing period, the re-determination will be denied.

EE. Whenever possible in processing re-determinations of eligibility for adult caretaker(s) or teen parent(s) currently receiving Low-Income Child Care, counties shall use information that is already available in other sources to document any verification including citizenship, age, and identity if the adult caretaker or teen parent's declaration is inconsistent in accordance with rule section 3.125(V).

FF. Counties shall reduce parent fees by twenty percent (20%) of the regularly calculated parent fee when a household utilizes a quality child care provider rated in the top three levels of the Department's quality rating system. For households utilizing multiple child care providers, only one child care provider is required to be in the top three quality levels for the reduced parent fee to apply.

GG. Reports of unpaid parent fees shall be documented on the case and the county shall not take action on a report of unpaid parent fees until re-determination. If the unpaid parent fee is reported outside of the required reporting period outlined in rule section 3.128(Q), the county shall not take any action. If at the time of re-determination, the parent fee remains unpaid and acceptable payment arrangements have not been made with the child care provider, the household shall remain ineligible until:

1. Delinquent parent fees are paid in full;

2. Adequate payment arrangements are made with the child care provider to whom the fees are owed and an agreement is signed by both parties; or

3. County determination of verified good faith efforts to make payment to the child care provider(s), when the client was unable to locate the child care provider(s).

HH. Counties shall authorize care based on verified need, by establishing an authorization to cover the maximum amount of units needed to ensure care is available based on the adult caretaker or teen parent's participation in an eligible activity, and shall not be linked directly to the adult caretaker or teen parent's activity schedule and should be based on the child's need for care.

II. Counties are encouraged to blend Head Start, Early Head Start and CCDF funding streams by authorizing care based on the child's need for care, regardless of the child's Head Start or early Head Start enrollment status, in order to provide seamless services to children dually enrolled in these programs.

JJ. Counties shall align the Low-Income Child Care re-determination date with the Head Start or Early Head Start program year upon notification that a child is enrolled in a Head Start or Early Head Start program. The re-determination date shall not occur any earlier than twelve (12) months from the application date.

KK. With regard to services to students enrolled in grades one (1) through twelve (12), no funds may be used for services provided during the regular school day, for any services for which the students received academic credit toward graduation, or for any instructional services, which supplant or duplicate the academic program of any public or private school. Exceptions to this may include but are not limited to:

1. When a child is temporarily prohibited from attending their regular classes due to a suspension or expulsion;

2. When a child is temporarily out of school due to scheduled breaks; or

3. When a child is temporarily out of school due to unexpected school closures.

LL. The authorization start date shall be the date a Low-Income Child Care case is determined eligible, except in the case of a pre-eligibility application. If the child will receive care from a qualified exempt child care provider, the authorization start date shall not be prior to the date the criminal background check has been completed and cleared.

MM. For pre-eligibility care reimbursable after eligibility has been determined and the county can provide benefits for the potential program participant, authorization shall be dated to the date the pre-eligibility application was received by the county.

NN. The county shall generate a Department-approved notice regarding changes to child care benefits within one (1) business day and provide to the primary adult caretaker, teen parent and child care provider via postal service, e-mail or other electronic systems, fax, or hand-delivery.

OO. If verification that is needed to correct the reason for closure of a child care case is received within thirty (30) calendar-days after the effective date of closure, eligibility shall be determined as of the date the verification was received regardless of any break in service period.

PP. The county shall generate Attendance Tracking System registration for the household upon case approval or initial authorization.

QQ. The county shall generate Attendance Tracking System registration for child care providers when a fiscal agreement with a provider is opened.

RR. The county shall make available the following child care provider information, including protective services information, to all staff whose responsibilities include child care benefit services:

1. Information known to licensing staff.

2. Information from previous agency contacts.

3. Information obtained from the fiscal agreement renewals.

4. Information obtained from adult caretaker(s) or teen parent(s), caseworker visits, and other sources.

5. Information about corrective action intervention by the counties, their designee(s), or the Department.

SS. The counties or their designee will complete an annual review of the state-administered system for child abuse and neglect on the qualified exempt child care provider(s) and any individual(s) in the qualified exempt child care provider's household who is eighteen (18) years and over not including the adult caretaker(s) or teen parent(s) if care is provided in the qualified exempt provider's home.

TT. Counties shall maintain a copy of the non-relative qualified exempt provider's health and safety report of inspection in the provider file. The report of inspection shall be made available to the client upon request to the county or the Department.

UU. Upon notification to counties by the Department that the relevant systems are capable of accommodating this review, the counties or their designee shall screen the qualified exempt child care provider(s) and any other adult eighteen (18) years of age and older, not including the adult caretaker(s) or teen parent(s), for current or previous adverse county contact, including but not limited to, allegations of fraud or IPV.

VV. The county shall reimburse licensed child care providers based on the state established base payment and tiered reimbursement rates.

WW. The state-established licensed child care provider reimbursement rates shall include a system of tiered reimbursement based on quality levels for licensed child care providers that enroll children participating in CCCAP.

XX. For renewals, the county shall send fiscal agreements at least sixty (60) calendar-days prior to the end date of the previous fiscal agreement via postal service, fax, hand-delivery, or e-mail or other electronic systems.

YY. Counties shall make fiscal agreements effective the date that the county receives the completed and signed fiscal agreement from the provider. Fiscal agreements shall be:

1. One (1) year in length for qualified exempt child care providers

2. Three (3) years in length for licensed child care providers

ZZ. Counties shall reimburse providers at the rate set by the Department.

AAA. Prior to approving a fiscal agreement with any child care provider, the county shall compare the child care provider's private pay rates to the county's reimbursement rates set by the Department. The CCCAP reimbursement rate paid to the provider by the county must be the lesser of the two.

BBB. Counties shall:

1. Have fiscal agreements signed by the child care provider and county staff prior to opening them in CHATS;

2. Enter a completed fiscal agreement into CHATS within five (5) business days of receipt; and

3. Provide a copy of the fully executed fiscal agreement to the child care provider within seven (7) calendar days of the CHATS entry.

CCC. Counties shall not make changes to their county ceiling rates more than every twelve (12) months unless instructed to do so by the Department.

DDD. Counties shall update CHATS and notify a provider via rate notification within fifteen (15) business days after a child care technician has received a system generated quality rating change notification indicating that a provider has had a change in their quality rating.

EEE. Counties shall verify that child care providers are not excluded from receiving payments prior to signing a fiscal agreement. The county shall make this verification check through the Excluded Parties List System (EPLS) established by the General Services Division on the website at: www.sam.gov.

FFF. Counties shall process complete manual claim forms in CHATS within twenty-one (21) calendar days of receipt for payments that were not automatically processed through CHATS. If processing of the complete manual claim form is delayed for any reason, the county shall notify the child care provider(s) in a timely manner and document the circumstances in CHATS.

GGG. In any cases where payments to licensed child care providers or qualified exempt child care providers are delayed more than three (3) calendar months past the end of the month care was provided, county-only money that was not allocated by the Department shall be used to pay for this care.

HHH. Counties shall ensure that child care providers are not charging the county more than the child care provider's established private pay rates.

III. County offices shall complete a random monthly review of attendance data for at least one percent (1%) or one provider, whichever is greater. The county or its designee shall take necessary action as defined in the county fraud referral process if the review indicates:

1. That the child care provider(s) may have submitted an inaccurate report of attendance for a manual claim, the county or its designee shall contact the child care provider(s) and adult caretaker(s) or teen parent(s) to resolve the inaccuracy.

2. That either the adult caretaker(s) or teen parent(s) or the child care provider has attempted to defraud the program or receive benefits to which they were not eligible. The county or its designee shall report that information to the appropriate legal authority.

JJJ. Counties shall refer, within fifteen (15) calendar-days of establishing recovery, to the appropriate investigatory agency and/or the district attorney, any alleged discrepancy which may be a suspected fraudulent act by a household or child care provider.

KKK. In collecting evidence of fraudulent activities, the counties or their designee shall not violate the legal rights of the individual. When the county has questions about whether an action it contemplates might violate the legal rights of the individual, it should seek the advice of its legal advisor.

LLL. Counties shall establish recoveries within twelve (12) months of discovery of the facts resulting in recovery.

MMM. Counties shall take whatever action is necessary to recover payments when households and/or child care providers owe money to the Department because of overpayments, ineligibility and/or failure to comply with applicable state laws, rules, or procedures.

NNN. Counties shall report established recoveries that are the result of legally designated or determined fraud or recoveries of five-thousand dollars ($5,000) or more to the Department.

3.126 PRE-ELIGIBILITY DETERMINATIONS

An Early Care and Education provider may provide services to the household prior to the final determination of eligibility and shall be reimbursed for such services only if the county determines the household is eligible for Low-Income Child Care services and there is no need to place the household on the wait list. The start date of eligibility is defined in rule section 3.125(Q). If the household is found ineligible for services, the Early Care and Education provider shall not be reimbursed for any services provided during the period between their pre-eligibility determination and the county's final determination of eligibility.

The Early Care and Education provider or county may conduct a pre-eligibility determination for child care assistance for a potential program participant to facilitate the determination process.

A. The Early Care and Education provider may submit the prospective program participant's State-prescribed Low-Income Child Care application, release of information, and documentation to the county for final determination of eligibility for child care assistance. The Early Care and Education provider shall signify on the first page of the application in the space provided that a pre-eligibility determination has been made.

B. The Early Care and Education provider or county may provide services to the household prior to final determination of eligibility, and the county shall reimburse an Early Care and Education provider:

1. As of the date the county receives the application from the Early Care And Education provider for such services only if the county determines the prospective program participant is eligible for services; and

2. There is no need to place the prospective program participant on a wait list.

C. All supporting documentation for a pre-eligibility application submitted by an Early Care and Education provider shall be received in thirty (30) calendar-days of the date the application was received or the application may be determined ineligible by the county. If all verifications are received between the thirty-first (31st) and sixtieth (60th) day, counties shall determine eligibility from the date the verification was received.

D. If the prospective program participant is found ineligible for services, the county shall not reimburse the Early Care and Education provider for any services provided during the period between its pre-eligibility determination and the county's final determination of eligibility.

E. If an Early Care and Education provider or county has conducted a pre-eligibility determination, they shall include documentation of the information on which the pre-eligibility determination has been made in or with the application. The documentation shall include household income, household composition, and low-income eligible activity.

F. When a county conducts a pre-eligibility determination, the county shall notify the prospective child care provider with the referral for pre-eligibility authorization that payment for care provided prior to full eligibility may not occur if the adult caretaker(s) or teen parent(s) is ultimately deemed ineligible for the CCCAP program.

G. A child care provider may refuse to serve a county pre-eligibility authorized program participant.

CHILD CARE PROVIDERS

3.127 ELIGIBLE FACILITIES

A. Licensed Facilities

The following facilities are required to be licensed and comply with licensing rules as defined in the Social Services rule manual, rule sections 7.701 through 7.712 of 12 CCR 2509-8, incorporated by reference in rule section 3.103(GGGG), above:

1. Family child care homes as defined in section 26.5-5-303(7), C.R.S.

2. Child care centers which are less than 24-hour programs of care, as defined in section 26.5-5-303(3), C.R.S.

B. Qualified Exempt Child Care Providers

1. Qualified exempt child care provider: A non-licensed family child care home in which less than twenty-four (24) hour care is given at any one time that meets one of the following:

   a. For a relative qualified exempt provider, any number of children directly related to the provider; or

   b. For a qualified exempt provider that is not a relative of the children in care, no more than four (4) children in care, with no more than two (2) children under the age of two (2) years at any one time.

1) if the provider's own children are in the provider's care, the provider's children count towards the maximum capacity of four (4).

c. The relationships for care outlined in (A)-(B) of this rule section include:

1) "Relative in-home care" means care provided by a relative in the child's own home by a person who is eighteen (18) years of age or older

2) "Relative out-of-home care" means care provided by a relative in another location by a person who is eighteen (18) years of age or older

3) "Non-relative in-home care" means care provided by a person, who is not a relative to the children in care, in the child's own home.

4) "Non-relative out-of-home care" means care provided by a person, who is not a relative to the children in care, outside of the child's home.

2. The counties or their designee shall register qualified exempt child care providers and include the following information: name, address (not a P.O. Box #), phone number, date of birth, and social security number or individual taxpayer identification number (ITIN). Any contract provided by an agency of a state or local government is considered a public benefit.

3. Qualified Exempt Child Care Provider Requirements

a. Qualified exempt child care provider(s) must be at least eighteen (18) years of age.

b. A qualified exempt child care provider shall not be the adult caretaker or teen parent of the child that is receiving care.

c. A qualified exempt child care provider shall not be a sibling of the child that is receiving care if living in the same residence.

d. As a prerequisite to signing a fiscal agreement with a county or its designee, a qualified exempt child care provider shall sign an attestation of mental competence. The attestation affirms that they, and any adult residing in the qualified exempt child care provider home where care is provided, has not been adjudged by a court of competent jurisdiction to be insane or mentally incompetent to such a degree that the individual cannot safely care for children.

e. A qualified exempt child care provider shall complete and sign the provider information form and the self-attestation form agreeing to participate in additional training as identified. As a part of this agreement, the provider shall not have had any of their own children removed from the home or placed in a residential treatment facility. The self-attestation form must include the signature of the adult caretaker(s) or teen parent(s) acknowledging monitoring responsibilities. A provider information form must be provided to the county and Department any time there is a new member of the provider's household.

4. Background Checks

a. A qualified exempt child care provider and any adult eighteen years of age or older who resides in the exempt child care provider's home, not including the adult caretaker(s) or teen parent(s), must be subject to a county level

background check. The information from the background check must serve only as the basis for further investigation.

b. A qualified exempt child care provider and any adult eighteen years of age or older who resides in the exempt child care provider's home, not including the adult caretaker(s) or teen parent(s), must also be subject to and pass a criminal background review as follows:

1) A review of the Federal Bureau of Investigations (FBI) fingerprint-based criminal history records pursuant for section 26.5-5-326, C.R.S.;

2) A review of the Colorado Bureau of Investigations (CBI) fingerprint-based criminal history records at application;

3) An annual review of the state administered database for child abuse and neglect;

4) An annual review of the CBI sex offender registry; and

5) The national sex offender registry public website (upon notification to counties by the Department that the relevant state and federal systems are capable of accommodating this review).

c. Information submitted to the CBI sex offender registry and the national sex offender registry public website shall include:

1) Known names and addresses of each adult residing in the home, not including the adult caretaker(s) or teen parents; and

2) Addresses.

d. At the time of submission of the completed background check packet, as determined by state procedures, a qualified exempt child care provider shall submit certified funds (i.e., money order or cashier's check) to cover all fees indicated below.

1) A fee for the administrative costs referred to in rule section 7.701.4, (F) (12 CCR 2509-8), are incorporated by reference in rule section 3.103(GGGG), above.

A fee for each set of submitted fingerprints for any adult who resides in the home where the care is provided, eighteen (18) years of age or older, not including the adult caretaker(s) or teen parent(s), will be required. Payment of the fee for the criminal record check is the responsibility of the individual being checked unless the county chooses to cover the cost associated with the criminal record check. Counties that choose to exercise this option shall document the policy within their county plan, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families.

2) Counties will be notified of the date the background check has cleared and shall use that date as the effective date of reimbursement for the fiscal agreement. Child care authorizations must not begin until the background check has cleared.

e. The qualified exempt child care provider(s) may continue to receive payment as long as the qualified exempt child care provider(s) or other adult is not ineligible due to the following circumstances:

1) Conviction of child abuse, as described in section 18-6-401, C.R.S.;

2) Conviction of a crime of violence, as defined in section 18-1.3-406, C.R.S.;

3) Conviction of any felony offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

4) Conviction of any felony that on the record includes an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

5) Conviction of any felony involving physical assault, battery or a drug related/alcohol offense within the five years preceding the date of the fingerprint-based criminal background check;

6) Conviction of any offense in another state substantially similar to the elements described in Items 1 through 5, above;

7) Has shown a pattern of misdemeanor convictions within the ten (10) years immediately preceding submission of the application. “Pattern of misdemeanor” shall include consideration of section 26.5-5-317, C.R.S., regarding suspension, revocation, and denial of a license, and shall be defined as:

a) Three (3) or more convictions of third degree assault as described in section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in section 18-6-800.3, C.R.S.;

b) Five (5) misdemeanor convictions of any type, with at least two (2) convictions of third degree assault as described in section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in section 18-6-800.3, C.R.S.; or,

c) Seven (7) misdemeanor convictions of any type.

8) Conviction has the same meaning as that in section 26.5-5-309(4)(A)(II), C.R.S.

5. A qualified exempt child care provider shall notify the county with whom he or she has contracted pursuant to a publicly funded state Child Care Assistance Program, within ten (10) calendar-days of any circumstances that result in the presence of any new adult in the residence.

6. If required documents are not returned within thirty (30) days, the qualified exempt child care provider shall be denied a fiscal agreement.

7. Additional requirements for non-relative qualified exempt child care providers:

a. Completion of all pre-service health and safety trainings approved by the Department, within three months of providing services as a qualified exempt child care provider under the Colorado Child Care Assistance Program.

b. An annual on-site health and safety inspection conducted by the Department or its designee. Non-relative qualified exempt providers shall correct any health and safety inspection standards within thirty (30) days after the inspection unless the results identify standards that must be corrected immediately.

c. Qualified exempt non-relative child care providers shall meet the mandatory child abuse and neglect reporting requirements annually.

d. If the non-relative qualified exempt child care provider fails to comply with any of the requirements in rule subsections (a)-(d) above, the county shall deny or terminate a fiscal agreement.

8. Qualified exempt child care providers who are denied a fiscal agreement or whose fiscal agreement is terminated may request an informal conference with county staff responsible for the action, the supervisor for that staff, and the county director or director's designee to discuss the basis for this decision and to afford the qualified exempt child care provider(s) with the opportunity to present information as to why the qualified exempt child care provider(s) feels the county should approve or continue the fiscal agreement. Any request for a conference shall be submitted in writing within fifteen (15) calendar-days of the date the qualified exempt child care provider is notified of the action. The county shall hold that conference within two (2) weeks of the date of the request. The county shall provide written notice of its final decision to the qualified exempt child care provider(s) within fifteen (15) business days after the conference.

9. Non-relative qualified exempt child care providers who are denied a fiscal agreement or whose fiscal agreement is terminated due to the Department's decision regarding adherence to health and safety standards may appeal the decision to the executive director of the Department or the executive director's designee in writing within fifteen (15) days of the county's decision. The executive director's decision is a final agency decision subject to judicial review by the state district court under section 24-4-106, C.R.S.

10. If a qualified exempt child care provider has not had an open authorization for ninety (90) calendar days, the provider's fiscal agreement shall be closed in CHATS.

C. For renewals, the county shall send fiscal agreements at least sixty (60) calendar-days prior to the end date of the previous fiscal agreement via postal service, fax, hand-delivery, or e-mail or other electronic systems.

D. Payment Methods

1. Payment for purchased child care shall be made to the child care provider(s) through CHATS if it is a qualified exempt child care provider(s) or licensed facility.

2. When a manual claim is needed to reimburse providers for payments that were not automatically processed through CHATS, the Department-prescribed child care manual claim form must be prepared and signed by the child care provider for increments of one month or less. The county shall utilize the Department-prescribed manual claim form to verify that the billing is for:

a. Care that was authorized and provided;

b. Reimbursable registration fees;

c. Reimbursable activity fees;

d. Reimbursable transportation fees;

e. Reimbursable hold slots;

f. Reimbursable drop in days; and/or

g. Reimbursable absence payments.

E. Child care providers shall be provided with a written notice of the process of termination of the fiscal agreement on the Department's fiscal agreement form.

3.128 CHILD CARE PROVIDER RESPONSIBILITIES

A. Child care providers shall maintain a valid child care license as required by Colorado statute unless exempt from the Child Care Licensing Act.

B. Child care providers shall report to the county if their license has been revoked, suspended, or denied within three (3) calendar-days of receiving notification or a recovery will be established of all payments made as of the effective date of closure.

C. Child care providers shall report to the county and state licensing any changes in address no less than thirty (30) calendar-days prior to the change.

D. Child care providers shall report to the county and state licensing any changes in phone number within ten (10) calendar-days of the change.

E. Child care providers shall allow parents, adult caretakers, or teen parents immediate access to the child(ren) in care at all times.

F. Child care providers shall accept referrals for child care without discrimination with regard to race, color, national origin, age, sex, religion, marital status, sexual orientation, or physical or mental handicap.

G. Child care providers shall provide children with adequate food, shelter, and rest as defined in licensing rule (12 CCR 2509-8, incorporated by reference in rule section 3.103(GGGG), above).

H. Child care providers shall keep all records regarding children and all facts learned about children and their relatives confidential pursuant to section 26.5-5-316(4), C.R.S.

I. Child care providers shall protect children from abuse/neglect and immediately report any suspected child abuse and neglect to the county, local law enforcement agency, or the Colorado Child Abuse and Neglect Hotline.

J. Child care providers shall provide child care at the facility address listed on the fiscal agreement and ensure care is provided by the person or business listed on the fiscal agreement. Exceptions are defined in licensing rules (12 CCR 2509-8, incorporated by reference in rule section 3.103(GGGG), above).

K. Child care providers will not be reimbursed for any care provided before the fiscal agreement start date and after the fiscal agreement end date.

L. Child care providers shall sign the fiscal agreement and all other county or state required forms. Payment shall not begin prior to the first of the month in which the fiscal agreement has been signed and received by the county.

M. Child care providers shall comply with Attendance Tracking System (ATS) requirements as defined in rule section 3.133.

N. Child care providers shall develop an individualized care plan (ICP) for children with additional care needs based upon the Individual Education Plan (IEP), or Individual Health Care Plan (IHCP), and provide a copy to the county eligibility worker on an annual basis or other alternate period of time determined in the plan.

O. Licensed child care providers shall maintain proof of up-to-date immunizations for the children in their care in accordance with rule section 7.712.52 (12 CCR 2509-8, incorporated by reference in rule section 3.103(GGGG), above). This rule does not apply to the following:

1. Qualified exempt child care Providers caring for children in the child's own home; or

2. Qualified exempt child care Providers caring only for children related to the child care provider such as grandchildren, great-grandchildren, siblings, nieces, or nephews, etc.

P. Child care Providers shall maintain paper or electronic sign in/out sheets that the person authorized to drop off/pick up the children has signed with the date, names of the children, and the time the children arrive and leave each day the children attend care. These records shall be available for county review upon request and maintained for the current year plus the three (3) immediately preceding years.

Q. Child care providers shall report non-payment of parent fees no later than sixty (60) calendar days after the end of the month the parent fees are due unless county policy requires it earlier. The unpaid parent fees can be reported by fax, e-mail or other electronic systems, in writing, or on the billing form.

R. Child care providers shall notify the county of unexplained, frequent and/or consistent absences within ten (10) calendar-days of establishing a pattern.

S. Child care providers shall not charge counties more than their established private pay rates.

T. Child care providers shall not charge adult caretakers or teen parents rates in excess of daily reimbursement rates agreed upon in the fiscal agreement (this includes the agreed upon registration, mandatory activity, and transportation fees if the county pays these fees).

U. If a licensed child care provider chooses to charge families for absences for which the county does not provide reimbursement, they shall use the CCCAP daily reimbursement rate agreed upon in the fiscal agreement.

V. Child care providers shall offer free, age-appropriate alternatives to voluntary activities. Child care providers shall only bill for:

1. Care that was authorized and provided;

2. Reimbursable registration fees;

3. Reimbursable activity fees;

4. Reimbursable transportation fees;

5. Reimbursable hold slots;

6. Reimbursable drop in days; and/or

7. Reimbursable absence payments.

W. Child care providers shall bill counties monthly for payments that were not automatically processed through CHATS including but not limited to:

1. Care that was authorized and provided;

2. Reimbursable registration fees;

3. Reimbursable activity fees;

4. Reimbursable transportation fees;

5. Reimbursable hold slots;

6. Reimbursable drop in days; and/or

7. Reimbursable absence payments

X. Payment for services shall be forfeited if the original Department-prescribed manual claim form is not submitted within sixty (60) calendar-days following the month of service.

Y. Reimbursable activity and/or transportation fees shall be billed for in accordance to the timeframe which is outlined in the current fiscal agreement.

Z. Child care providers shall not hold, transfer, or use an adult caretaker or teen parent's individual attendance credentials. If intentional misuse is founded by any county or state agency, the child care provider will be subject to fiscal agreement termination as outlined in rule section 3.134.

3.129 COMPLAINTS ABOUT CHILD CARE PROVIDERS

Counties and the public may access substantiated complaint files regarding complaints about matters other than child abuse at the Department, Division of Early Learning, Licensing, and Administration, or on the Department's website at https://cdec.colorado.gov/find-child-care.

A. Complaints about qualified exempt child care providers

Complaints shall be referred to the Department, Division of Early Learning, Licensing, and Administration staff or appropriate contracted agencies the same day as it is received by the county when:

1. The complaint is about a qualified exempt child care provider who is alleged to be providing illegal care.

2. The complaint is related to issues such as violation of non-discrimination laws or denial of parent access to children in care (does not include investigation of illegal care).

B. Complaints about licensed child care providers

The following guidelines shall apply to complaints received by counties about licensed child care providers:

1. If the complaint concerns child abuse or neglect, the county shall immediately refer the complaint to the appropriate county protective services unit.

2. If the complaint concerns a difference of opinion between a child care provider and an adult caretaker(s) or teen parent(s), the counties shall encourage the child care provider and adult caretaker or teen parent to resolve their differences.

3. Complaints shall be referred to the Department, Division of Early Learning, Licensing, and Administration staff the same day the county receives it when the complaint is about a family child care home or child care center and is related to noncompliance with child care licensing statutes or regulations.

PURCHASE OF SERVICES

3.130 CHILD CARE PROVIDER REIMBURSEMENT RATES

The counties shall implement the state-established licensed child care provider base payment rates for each county on July first every year. In addition to establishing licensed child care provider base payment rates, the Department will establish tiered reimbursement rates based on quality levels for licensed child care providers that enroll children participating in CCCAP.

A. Payment rates shall be defined utilizing the Department established, system supported age bands.

B. Rate types are selected by child care provider type (licensed family child care home, licensed child care center, and qualified exempt child care providers). The Department has established rate type definitions to be used by all counties and deviation from the rate definitions shall not be permitted.

C. Payments shall be made in part time/full time daily rates.

1. Part-time is defined as zero (0) hours, zero (0) minutes, and one (1) second through five (5) hours, zero (0) minutes, and zero (0) seconds per day. Part time is paid at fifty-five percent (55%) of the full time rate.

2. Full time is defined as five (5) hours, zero (0) minutes, and one (1) second through twelve (12) hours, zero (0) minutes, and zero (0) seconds.

3. Full-time/part time is defined as twelve (12) hours, zero (0) minutes, one (1) second through seventeen (17) hours, zero (0) minutes, zero (0) seconds of care.

4. Full time/full time is defined as seventeen (17) hours, zero (0) minutes, one (1) second through twenty-four (24) hours, zero (0) minutes, zero (0) seconds of care.

5. Counties may set rates for alternative care as defined by the county and reported in the county plan, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families.

D. Counties must not set qualified exempt child care provider rates such that they inhibit or deter providers from becoming licensed.

E. Absences and Holidays.

1. Effective August 1, 2021, until June 30, 2022, counties shall reimburse licensed child care providers for absences based on the following schedule:

a. No fewer than six (6) absences per month if they are in levels one (1) or two (2) of the Department's quality rating and improvement system.

b. No fewer than seven (7) absences per month if they are in levels three (3), four (4), or five (5) of the Department's quality rating and improvement system.

c. No fewer than six (6) absences per month if they are a school age child care program that does not have a quality rating through the Department's quality rating and improvement system.

2. Effective July 1, 2022, counties shall reimburse licensed child care providers for absences based on the following schedule:

a. No fewer than three (3) absences per month if they are in levels one (1) or two (2) of the Department's quality rating and improvement system.

b. No fewer than four (4) absences per month if they are in levels three (3), four (4), or five (5) of the Department's quality rating and improvement system.

c. No fewer than three (3) absences per month if they are a school age child care program that does not have a quality rating through the Department's quality rating and improvement system.

3. Counties may pay licensed child care providers for holidays in accordance with the policy set by the county and approved by the Department.

4. Counties may adopt a policy allowing the use of hold slots to address payments for unattended authorized care that is in addition to absences, holidays, and school breaks to hold a child's space with a provider when the child is not in care.

F. Counties may adopt a policy to pay for drop in days in addition to regularly authorized care.

G. Bonus Payments

Counties shall not at any time use federal Child Care Development Block Grant Funds (CCDBG), or state General Funds, for the payment of bonuses to child care providers serving children in the CCCAP program. A county shall not use CCDBG or state General Funds to retroactively increase the daily rate paid to child care providers and issue a payment to child care providers based on that retroactive calculation.

H. Child care providers who contend that the county has not made payment for care provided under CCCAP in compliance with these rules may request an informal conference with staff, the appropriate supervisor, the county director or the director's designee, and, if requested by the child care provider(s), state program staff. Any request for a conference shall be submitted in writing within fifteen (15) calendar-days of the date of the action. The county shall hold that conference within two (2) weeks of the date of the request. The county shall provide written notice of its final decision within fifteen (15) business days of the conference. The purpose of the conference shall be limited to discussion of the payments in dispute and the relevant rules regarding payment.

3.131 SLOT CONTRACTS (COUNTY OPTION)

Slot contracts are used as a method to increase the supply and improve the quality of child care for county-identified target populations and areas through collaborative partnerships that meet family and

community needs. Slot contracts should also support continuity of care for households, funding stability for licensed child care providers, and expenditure predictability for counties.

A. Counties may choose to enter into a slot contract with a licensed child care provider not to exceed twelve (12) months or the length of the fiscal agreement in place (if it expires in less than twelve (12) months) to purchase a specified number of slots for children enrolled in CCCAP.

B. When a county chooses the option to use slot contracts with a licensed child care provider, the following steps must be completed a minimum of sixty (60) days prior to the commencement of the slot contract:

1. The county must submit a new county plan in CHATS and include selection of the slot contract option.

2. At the time the county plan is submitted, a slot contract policy based on the Department-developed policy template must be submitted to the Department for approval. The policy must include but not limited to the following:

a. The county identified target populations and areas.

b. How the county will determine the length of the slot contract.

c. How the county will identify the need for the slot contract at a specific licensed child care provider.

d. How the county will ensure a fair and equitable review and selection process when selecting a licensed child care provider in the case of multiple child care programs expressing interest in entering into slot contracts. This must include an overview of the evaluation process used to identify licensed child care providers that are aligned with the county-determined criteria.

e. How the county will determine the number of slots they contract for with a licensed child care provider.

f. How the county will collaborate with the licensed child care provider to identify children to fill the vacant slots

g. How the county will continuously monitor the success of a slot contract during the contract period to include but not limited to:

1) What the measure of success is for the slot contract and how it is determined.

2) Frequency of monitoring the success of the slot contract, which must be at least twice per year but no more often than quarterly.

3) Cumulative attendance expectations and the period over which attendance expectations must be defined. Cumulative attendance expectations must not be set higher than the following:

a) Seventy five percent (75%) for infants;

b) Eighty percent (80%) for toddlers; and

c) Eighty five percent (85%) for preschoolers.

d) The time over which cumulative attendance must be met must be no less than quarterly and no more than six (6) months.

e) A plan for how the county will coordinate with the licensed child care provider to take intermediate steps or interventions if progress monitoring shows that attendance or other expectations are not being met.

f) Contract renegotiation for not reaching the set measure of success for the slot contract including under-utilization of paid slots during the designated monitoring period.

h. How the county will determine the need for a slot contract renewal.

C. Licensed child care providers that are fiscally managed by a county may not enter into a slot contract with the county that fiscally manages them.

D. Counties must submit the state developed monitoring tool in accordance with the county's monitoring schedule as specified in the county policy, within thirty-one (31) days of the end of the monitoring period.

E. Target population and areas may include but are not limited to:

1. Infants and toddlers;

2. Children with additional care needs;

3. Children needing care during nontraditional hours (i.e., evening, overnight and weekend care);

4. Children in underserved areas due to inadequate child care services and/or resources;

5. Areas where quality rated programs are in short supply for children enrolled in CCCAP; or

6. Any other county-identified target population or areas.

F. Criteria for assessing the need for slot contracts may include but is not limited to:

1. Counties must demonstrate the rationale for identifying specific CCCAP populations or underserved areas in their county;

2. The demographic data source(s) for all CCCAP households that supports the need to expand quality programs for specific CCCAP target populations and/or justifies needs based on underserved areas (demographic data may be based on zip codes or other geographic areas as determined by the county) must be identified;

3. Counties are strongly encouraged to work with Early Childhood Councils, resource and referral agencies, and other community-based organizations to identify the need for contracts with specific populations or in specific areas of the county.

G. Licensed child care programs who enter into slot contract agreements with counties must agree to be engaged in quality building at a minimum of a level two (2) quality rating through the Department's quality rating and improvement system.

H. The Department will maintain a slot contract template that meets the requirements of this rule and all state and federal contracting requirements.

1. Counties must utilize the state-developed slot contract template in CHATS which must include any county-specific target populations and areas.

2. The Department will assess and approve within thirty (30) days of receipt:

a. The updated county plan; and

b. The county submitted slot contract policy.

3. The Department will review the monitoring conducted by the county based on the county monitoring schedule.

3.132 ARRANGEMENT FOR CHILD CARE SERVICES

A. Counties shall use the Department-prescribed child care authorization notice form to purchase care on a child-by-child basis and identify the amount of care and length of authorized care. Payment for care will be authorized for child care providers who have a license or who are qualified exempt child care providers and have a current, signed Department-prescribed fiscal agreement form(s) with the county.

B. Child care is typically authorized for twelve (12) consecutive months except:

1. When an eligible child is or will be enrolled in a program that does not intend to operate for the entire eligibility period;

2. When an eligible child's adult caretaker(s) or teen parent(s) does not intend to keep the child enrolled with their initial child care provider(s) during the entire eligibility period; or,

3. When the adult caretaker(s) or teen parent(s) are participating in time limited activities such as job search or education/training.

C. When payment will be made to the child care provider(s), the county shall forward the child care authorization notice form to the child care provider(s) within seven (7) working days of determined eligibility. This time limit applies to original, changed, and terminated actions. The Department may not reimburse counties if the seven (7) working day requirement is not met.

D. Child care will be paid for children from birth to thirteen (13) years for a portion of a day, but less than twenty-four (24) hours. Child care for eligible activities will include reasonable transportation time from the child care location to eligible activity and from eligible activity to child care location.

E. Children over the age of thirteen (13) but up to age nineteen (19), who are physically or mentally incapable of caring for themselves or who are under court supervision, may be eligible for child care due to having additional care needs for a portion of a day but less than twenty-four (24) hours. Counties may pay more for children who have additional care needs based upon verified individual child needs and if documented in county policy, but rates cannot exceed the child care provider's published private pay rates.

F. Counties may pay for activity fees if the child care provider charges such fees, and if the fiscal agreement contains the child care provider's policy on activity fee costs. Counties shall set their own limit on activity fees in accordance with the County Rate Plan in CHATS, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families, and county policy that is approved by the Department.

G. Counties may pay for transportation costs if the child care provider charges such costs, and if the fiscal agreement contains the child care provider's policy on transportation costs. Allowable costs include the child care provider's charges for transportation from the child care provider's facility to another child care or school facility. Transportation costs do not include travel between an adult caretaker's or teen parent's home and the child care provider's facility. Counties shall set their own limit on transportation fees in accordance with the County Rate Plan in CHATS, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families and county policy that is approved by the Department.

H. Counties may pay for registration fees if the child care provider is licensed, and if the fiscal agreement contains the child care provider's policy on registration costs. Counties shall set their own limit on registration fees in accordance with the County Rate Plan in CHATS, which can be found on the Colorado Department of Early Childhood website at https://cdec.colorado.gov/colorado-child-care-assistance-program-for-families and county policy that is approved by the Department.

I. Any money paid or payable to child care providers shall be subject to execution, levy, attachment, garnishment, or other legal process.

3.133 ATTENDANCE TRACKING SYSTEM (ATS)

A. The adult caretaker(s) or teen parent(s) shall utilize the ATS as follows:

1. To record child's authorized and utilized daily attendance at the designated child care provider's location.

2. In the event that the child care provider has recorded a missed check-in or check-out, the adult caretaker or teen parent shall confirm the record in the ATS for the prior nine (9) day period.

3. Adult caretakers or teen parents shall not leave their individual attendance credentials in the child care provider's possession at any time or the child care provider may be subject to disqualification.

4. Non-cooperation with the use of the ATS may result in case closure and/or non-payment of the child care benefits as defined by a Department approved county policy.

B. The child care provider will receive registration information for the ATS upon entering into a fiscal agreement with the county and shall utilize the ATS as follows:

1. To ensure that CCCAP adult caretakers or teen parents record child's authorized and utilized daily attendance at the designated child care provider's location.

2. If adult caretaker(s) or teen parent(s) miss one or more check-ins/outs to record daily attendance, the child care provider may record the missed check-in/out in the ATS. If the child care provider records the missed check-in/out in ATS, the adult caretaker or teen parent must confirm the record in the ATS for the prior nine (9) day period for automatic payment.

3. The child care provider shall not hold, transfer, or use any adult caretaker or teen parents' Individual attendance credentials at any time, or the child care provider may be subject to disqualification.

4. Failure to use the ATS may result in nonpayment of the child care benefit as defined by a Department approved county policy, unless non-use of the ATS is approved by the Department.

3.134 COUNTY FISCAL AGREEMENT AUTHORITY

A. Counties have the authority to enter into a fiscal agreement with Qualified Exempt Child Care Providers and licensed child care providers, including those providers in a probationary status.

B. Counties have the authority to refuse to enter into a fiscal agreement with a child care provider.

C. Counties have the authority to terminate a fiscal agreement after providing at least fifteen (15) calendar-days' notice by postal service mail, fax, hand-delivery, or email or other electronic systems.

D. The counties have the authority to terminate a fiscal agreement without advance notice if a child's health or safety is endangered or if the child care provider is under a negative licensing action as defined in rule sections 7.701.2, and 7.701.33.F (12 CCR 2509-8, incorporated by reference in rule section 3.103(SSS), above). Counties may not enter into or continue a fiscal agreement with any child care provider whose license has been denied, suspended, or revoked through negative licensing action.

E. Counties may notify a child care provider of an immediate termination verbally, but written notice of that action must also be forwarded to the child care provider within one (1) business day. Any notice regarding denial or termination of a fiscal agreement shall include information regarding the child care provider's right to an informal conference.

PROGRAM INTEGRITY

3.135 INTENTIONAL PROGRAM VIOLATION (IPV)

A. A county shall conduct an investigation of any adult caretaker(s) or teen parent(s) who has applied for or received CCCAP whenever there is an allegation or reason to believe that an individual has committed an IPV as described below.

1. Following investigation, action must be taken on cases where documented evidence exists to show an individual has committed one or more acts of IPV. Action must be taken through:

    a. Obtaining a "Waiver of Intentional Program Violation Hearing;"

    b. Conducting an administrative disqualification hearing; or

    c. Referring the case for civil or criminal action in an appropriate court of jurisdiction.

2. Overpayment collection activities must be initiated immediately in all cases even if administrative disqualification procedures or referral for prosecution is not initiated.

3.136 CRITERIA FOR DETERMINING INTENTIONAL PROGRAM VIOLATION (IPV)

A. The determination of IPV must be based on clear and convincing evidence that demonstrates intent to commit IPV. "Intent" is a false representation of a material fact with knowledge of that falsity or omission of a material fact with knowledge of that omission.

B. "Clear and convincing" is proof that is stronger than "a preponderance of evidence" and is unmistakable or free from serious or substantial doubt.

3.137 INTENTIONAL PROGRAM VIOLATION/ADMINISTRATIVE DISQUALIFICATION HEARINGS (IPV/ADH)

An IPV/ADH shall be requested whenever facts of the case do not warrant civil or criminal prosecution, where documentary evidence exists to show an individual has committed one or more acts of IPV, and the individual has failed to sign and return the Waiver of IPV form.

A. A county may conduct an IPV/ADH or may use the Colorado Department of Personnel and Administration's Office of Administrative Courts (OAC) to conduct the IPV/ADH. A Department-prescribed form to request the administrative disqualification hearing for IPV must be used for this purpose.

The accused individual may request that the OAC conduct the ADH/IPV in lieu of a county level hearing. Such a request must be submitted at least ten (10) calendar-days before the scheduled date of the county hearing.

B. Notice of the date of the administrative disqualification hearing must be on the form prescribed by the Department. The notice form must be mailed at least thirty (30) calendar-days prior to the hearing date to the last known address on record for the individual alleged to have committed an IPV. The notice form must include a statement that the accused individual may waive the right to appear at the administrative disqualification hearing and attach the hearing procedure form and statement of client rights.

C. The Administrative Law Judge (ALJ) or county hearing officer shall not enter a default against the individual accused of having committed an IPV for failure to file a written answer to the notice of IPV hearing form, but shall base the initial decision upon the evidence introduced at the hearing.

D. At the accused individual's request and upon good cause shown, the administrative hearing shall be rescheduled not more than once. The request for continuance must be received by the county hearing officer or ALJ prior to the administrative disqualification hearing. The hearing shall not be continued for more than a total of thirty (30) calendar-days from the original hearing date. One additional continuance is permitted at the hearing officer or ALJ's discretion.

E. An IPV/ADH must not be requested against an accused individual whose case is currently being referred for prosecution on a civil or criminal action in an appropriate state or federal court.

3.138 WAIVER OF ADMINISTRATIVE DISQUALIFICATION HEARING

A. Supporting evidence warranting the scheduling of an administrative disqualification hearing for an alleged IPV must be documented with a county supervisory review. If the county determines there is evidence to substantiate that an individual has committed an IPV, the county shall allow that individual the opportunity to waive the right to an administrative disqualification hearing.

B. A Department-approved Notice of Alleged Intentional Program Violation form including the client's rights, the Department-approved Waiver of Intentional Program Violation Hearing form, and the Department approved request for a state level Administrative Disqualification Hearing for Intentional Program Violation form must be mailed to the individual suspected of an IPV. An investigator in the process of completing an investigation must offer the waiver to the individual if the investigator is not intending to pursue criminal or civil action. The individual must have fifteen (15) calendar-days from the date these forms are mailed by the county to return the completed Waiver of IPV hearing form.

C. When the accused individual waives their right to an administrative disqualification hearing, a written notice of the disqualification penalty must be mailed to the individual. This notice shall be on the Department-prescribed notice form.

D. The completion of the waiver is voluntary. The county must not require an individual to complete it or by its actions appear to require the individual to complete the waiver.

3.139 DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION (IPV)

A. If the accused individual signs and returns the request for waiver of IPV hearing form within the fifteen (15) day deadline or the individual is found to have committed an IPV through the hearing process, the individual shall be provided with a notice of the period of disqualification for CCCAP benefits. The disqualification shall begin the first day of the month following the disqualification determination, allowing for authorization noticing, unless the household in which a disqualified person is living is ineligible for other reasons.

B. Once the disqualification has been imposed, the period shall run without interruption even if the participant becomes ineligible for CCCAP.

C. The penalty shall be in effect for:

1. Twelve (12) months upon the first occasion of any such offense;

2. Twenty-four (24) months upon the second occasion of any such offense; and

3. Permanently upon the third such offense.

D. The disqualification penalties affect any household to which the adult caretaker(s) or teen parent(s) is a member.

E. The penalty period shall remain in effect unless and until the finding is reversed by the Department or a court of appropriate jurisdiction.

F. A penalty imposed by one county shall be used when determining the appropriate level of disqualification and penalty for that individual in another county.

G. The disqualification penalties may be in addition to any other penalties which may be imposed by a court of law for the same offenses.

3.140 NOTIFICATION OF HEARING DECISION

A. If the county hearing officer finds the accused individual has committed an IPV as a result of a county hearing, a written notice shall be provided to notify the primary adult caretaker or teen parent of the decision. The local level hearing decision notice shall be a Department-prescribed form, which includes a statement that a state level hearing may be requested with the request form attached.

B. In a hearing before an Administrative Law Judge (ALJ), the determination of IPV shall be an initial decision, which shall not be implemented while pending Department review and final agency action. Pursuant to section 24-4-105(14)(c), C.R.S., the initial decision shall advise the adult caretaker(s) or teen parent(s) that failure to file exceptions to provisions of the initial decision will waive the right to seek judicial review of a final agency action affirming those provisions.

C. When a final agency action is made, a written notice of the disqualification penalty shall be mailed to the adult caretaker(s) or teen parent(s). This notice shall be on a Department-prescribed notice form.

3.141 REFERRAL TO DISTRICT ATTORNEY

When the counties or their designee(s) determine that they have paid or are about to pay for child care as a result of a suspected criminal act, the facts used in the determination shall be reviewed with the counties' legal advisor, investigatory unit and/or a representative from the District Attorney's office. If the available evidence supports suspected criminal acts, the case shall be referred to the District Attorney. All referrals to the District Attorney shall be made in writing and shall include the amount of assistance fraudulently received by the adult caretaker, teen parent, or child care provider.

The following actions may be taken:

A. If the District Attorney prosecutes, the amount of overpayment due will be taken into consideration and may be included in the court decision and order.

B. Interest may be charged from the month in which the amount of overpayment due was received by the collection entity until the date it is recovered. Interest shall be calculated at the legal rate.

C. If the District Attorney decides not to prosecute, the amount of overpayment due will continue to be recovered by all legal means. The county retains the option to pursue IPV/ADH or other administrative measures.

D. A county referral for prosecution is not a violation of the safeguards and restrictions provided by confidentiality rules and regulations.

3.142 CRIMINAL VERDICT DISQUALIFICATION

Upon determination of fraudulent acts, adult caretaker(s) or teen parent(s) who have signed the application or re-determination will be disqualified from participation in CCCAP for the following periods, pursuant to sections 26-1-127(1) and 26.5-4-116(1), C.R.S. Such disqualification is mandatory and in addition to any other penalty imposed by law. Disqualification levels are:

A. Twelve months (12) for the first offense;

B. Twenty-four months (24) for a second offense; or

C. Permanently for a third offense.

3.143 DISQUALIFICATION PENALTIES

A. In addition to any criminal penalty imposed, the disqualification penalties affect the adult caretaker(s) or teen parent(s) the penalty period shall remain in effect unless the finding is reversed by the Department or a court of appropriate jurisdiction. The disqualification period shall follow the adult caretaker(s) and teen parent(s) regardless of the county of residence in Colorado. Penalties imposed are progressive regardless of the county of residence for each subsequent penalty level.

B. Child care providers shall be subject to the fiscal agreement termination process outlined in rule section 3.132.

3.144 HEARING AND DISPUTE RESOLUTION RIGHTS

A. Adult caretaker(s) or teen parent(s) have the right to a county dispute resolution conference or state level fair hearing pursuant to Colorado Department of Human Services rule sections 3.840 and 3.850 of Income Maintenance Volume 3, incorporated by reference in rule section 3.109.

B. Child care providers shall be informed of their right to a county dispute resolution conference on the reverse side of their copy of the child care authorization notice pursuant to Colorado Department of Human Services rule section 3.840, "County Dispute Resolution Process."

3.145 CHILD CARE RECOVERY

When the counties or their designee have determined that an adult caretaker(s) or teen parent(s) has received public assistance for which he or she was not eligible due to an increase in household income that causes the household's income exceeds eighty-five percent (85%) of the State median income; or a change in the qualifying eligible activity that was not reported within four (4) weeks of its occurrence; or a child care provider has received child care payments they were not eligible for:

A. The county, or its designee(s), must determine if the overpayment is to be recovered. Exception from recovery includes:

1. The household is without fault in the creation of the overpayment; and,

2. The household has reported any increase in income or change in resources or other circumstances affecting the household's eligibility within the timely reporting requirements for the program.

B. The county or its designee must determine whether there was willful misrepresentation and/or withholding of information and considers or rules out possible fraud;

C. The county or its designee must determine the amount of overpayment;

D. The county or its designee must notify the household or child care provider(s) of the amount due and the reason for the recovery using the timely written notice rules; and

E. The county or its designee must enter the amount of the overpayment and other specific factors of the situation in the case record, including the calculation used to determine the recovery amount.

3.146 TIMELINESS AND AMOUNT

A. A recovery for overpayment of public assistance is established when the overpayment occurred during the twelve (12) months preceding discovery and the facts to establish recovery have been received. However, when a single overpayment or several overpayments have been made within the prior twelve (12) months and the overpayments total less than fifty dollars ($50), a recovery for repayment is not made.

B. If an overpayment occurs due to willful misrepresentation or withholding of information and the county is unable to determine income and activity eligibility criteria for child care previously provided, either through verification from the household or child care provider(s) or access to other verification sources, the county shall recover the entire benefit for the affected months.

1. For willful misrepresentation and/or withholding of information, all overpayments will be pursued regardless of how long ago they occurred.

3.147 RECOVERY PROCESS

A. When is the county determines that an overpayment has occurred, the counties or their designee shall:

1. Document the facts and situation that produced the overpayment and retain this documentation until the overpayment is paid in full or for three (3) years plus the current year, whichever is longer.

2. Determine what benefits the household was eligible for and recover benefits for which the household was found to be ineligible, except in the case of willful misrepresentation or withholding of information.

3. Determine the payments for which the child care provider was not eligible and recover those payments.

4. Initiate timely written notice allowing for the fifteen (15) calendar day noticing period. Such notice shall include a complete explanation, including applicable rules, concerning the overpayment, recovery sought and appeal rights.

5. Take action to recover following the right of appeal and fair hearing process.

6. Pursue all legal remedies available to the county in order to recover the overpayment. Legal remedies include, but are not limited to:

    a. Judgments;

    b. Garnishments;

    c. Claims on estates; and

    d. The state income tax refund intercepts process.

7. In accordance with sections 26.5-4-119 and 39-21-108, C.R.S., the state and counties or their designees may recover overpayments of public assistance benefits through the offset (intercept) of a taxpayer's State Income Tax Refund.

    a. This method may be used to recover overpayments that have been:

        1) Determined by final agency action;

        2) Ordered by a court as restitution; or

        3) Reduced to judgment.

    b. This offset (intercept) may include the current legal rate of interest on the total when fraud or intentional program violation has been determined. Offsets (intercepts) are applied to recoveries through use of a hierarchy. The hierarchy is:

        1) Fraud recoveries, oldest to newest;

        2) Court ordered recoveries, oldest to newest; and

        3) Client error recoveries, oldest to newest.

B. Prior to certifying the taxpayer's name and other information to the Colorado Department of Revenue, the Department shall notify the taxpayer, in writing at their last-known address, that the Department intends to use the tax refund offset (intercept) to recover the overpayment. In addition to the requirements of section 26.5-4-119(2), C.R.S., the pre-offset (intercept) notice shall include the name of the counties claiming the overpayment, a reference to child care as the source of the overpayment, and the current balance owed. The taxpayer is entitled to object to the offset (intercept) by filing a request for a county dispute resolution conference or state hearing within thirty (30) calendar-days from the date that the pre-offset notice is mailed, faxed, emailed, sent via other electronic systems, or hand-delivered to the taxpayer. In all other respects, the procedures applicable to such hearings shall be those stated elsewhere in Colorado Department of Human Services rule sections 3.840 and 3.850, and incorporated by reference in rule section 3.109, above. At the hearing on the offset (intercept), the counties or their designee, or an Administrative Law Judge (ALJ), shall not consider whether an overpayment has occurred, but may consider the following issues if raised by the taxpayer in their request for a hearing. Whether:

1. The taxpayer was properly notified of the overpayment;

2. The taxpayer is the person who owes the overpayment;

3. The amount of the overpayment has been paid or is incorrect; or

4. The debt created by the overpayment has been discharged through bankruptcy.

Editor's Notes

History

New rule emer. rule eff. 10/01/2022.

Entire rule eff. 01/14/2023. Rules in 8 CCR 1403-1 were re-adopted from 9 CCR 2503-9.

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Office of the Attorney General

Tracking number: 2023-00611

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

Colorado Child Care Assistance Program

on 10/27/2023

8 CCR 1403-1

COLORADO CHILD CARE ASSISTANCE PROGRAM RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 10/27/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 13, 2023 13:24:22

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of State

Agency

Secretary of State

CCR number

8 CCR 1505-6

Rule title

8 CCR 1505-6 RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE 1 - eff 12/15/2023

Effective date

12/15/2023

COLORADO DEPARTMENT OF STATE

[8 CCR 1505-6]

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

Rules as Adopted - Clean

October 25, 2023

(Publication instructions/notes):

Amendments to 8 CCR 1505-6 are as follows:

Amendment to Rule 1.5 to clarify that a committee refers to a political party committee, not the entire political party:

1.5 "Committee" as used generally in these rules includes candidate committee, political committee, small donor committee, issue committee, small-scale issue committee, independent expenditure committee, political party committee, and political organization.

Amendments to Rule 10.17 concerning a grammatical error in section (a) and updating a numerical miscalculation from 2015 within section (i)'s table:

10.17 Current adjusted limits

10.17.1 Adjusted limits made in the first quarter of 2023 and effective until the next adjustment is made in 2027:

(a) There is no adjustment to the contribution limits on individual donations to small donor committees outlined in Colo. Const. Article XXVIII, Section 2(14).

[No changes to sections (b) through (h).]

(i) This table contains the contribution limits listed in subsections (a)-(h).

Recipient:	Contributor:				
	Natural Person	Person, other than a natural person	Political committee	Small donor committee	Political party
Political committee	$725 per election cycle	$725 per election cycle	$725 per election cycle	$725 per election cycle	$725 per election cycle
Small donor committee	$50 per year	Prohibited	Prohibited	Prohibited	Prohibited
Governor (governor & lt. governor)	$725 per election cycle*	$725 per election cycle*	$725 per election cycle*	$7,825 per election cycle*	$789,060 per election cycle
Secretary of state, state treasurer, attorney general	$725 per election cycle*	$725 per election cycle*	$725 per election cycle*	$7,825 per election cycle*	$157,805 per election cycle
State senate	$225 per election cycle*	$225 per election cycle*	$225 per election cycle*	$3,100 per election cycle*	$28,395 per election cycle
State house of representatives, state board of education, regent of the University of Colorado, district attorney	$225 per election cycle*	$225 per election cycle*	$225 per election cycle*	$3,100 per election cycle*	$20,500 per election cycle
Political party	$4,675 ($3,875 at the state level) per year	$4,675 ($3,875 at the state level) per year	$4,675 ($3,875 at the state level) per year	$23,600 ($19,650 at the state level) per year	Transfers within a party may be made without limitation.
County candidate	$1,425 per election cycle*	$1,425 per election cycle*	$1,425 per election cycle*	$14,400 per election cycle*	$25,475 per election cycle
School district director	$2,500 per election cycle	$2,500 per election cycle	$2,500 per election cycle	$25,000 per election cycle	$2,500 per election cycle

* A candidate may accept the contribution limit for both the primary election and the general election.

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Office of the Attorney General

Tracking number: 2023-00610

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

Secretary of State

on 10/25/2023

8 CCR 1505-6

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

The above-referenced rules were submitted to this office on 10/25/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 13, 2023 11:48:19

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Emergency Rules Adopted

Department

Department of Revenue

Agency

Marijuana Enforcement Division

CCR number

1 CCR 212-3

Rule title

1 CCR 212-3 COLORADO MARIJUANA RULES 1 - eff 10/27/2023

Effective date

10/27/2023

Expiration date

02/24/2024

COLORADO
Department of Revenue
Marijuana Enforcement Division

PROPOSED RULE REVISIONS

Colorado Marijuana Rules
1 CCR 212-3

Final Permanent Rulemaking Hearing
October 30, 2023

PLEASE NOTE: *Changes highlighted in yellow indicate revisions that were made after the emergency rules were filed on June 29, 2023. These revisions do not substantively change any fees and are intended to provide additional clarity.*

Part 2 – Applications and Licenses

2-200 Series – Applications and Licenses Rules

Basis and Purpose – 2-205

The statutory basis for this rule includes but is not limited to sections 44-10-103, 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(b), 44-10-203(2)(h), 44-10-203(2)(q), 44-10-203(2)(w), 44-10-203(2)(dd)(XII), 44-10-303(2)(b), 44-10-310(7), 44-10-313, 44-10-401, 44-10-801, 44-10-802, 44-10-803, 44-10-1201, 44-10-1202, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish fees required for applications, renewals, licenses fees, permits, and other fees required to accompany applications and submissions to the Division.

2-205 – Fees

A. Regulated Marijuana Business Initial Application and License Fees.

1. Levels. The following levels apply to Regulated Marijuana Businesses with direct Controlling Beneficial Owners, which includes but is not limited to natural persons, Owner Entities, Publicly Traded Companies, Trusts, Qualified Institutional Investors and Qualified Private Funds. This does not include indirect Controlling Beneficial Owners of the licensed Regulated Marijuana Business, in accordance with Rules 2-235(A)(2)(a) and 2-235(B)(1)(b). The levels are:

   a. Level 1: One (1) to four (4) Controlling Beneficial Owners.

   b. Level 2: Five (5) to nine (9) Controlling Beneficial Owners.

   c. Level 3: Ten (10) or more Controlling Beneficial Owners.

2. Medical Marijuana Businesses.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**

Medical Marijuana Store	Level 1: $6,440.00 Level 2: $9,680.00 Level 3: $12,880.00	Level 1: $1,610.00 Level 2: $2,420.00 Level 3: $3,220.00	Level 1: $8,050.00 Level 2: $12,100.00 Level 3: $16,100.00
Medical Marijuana Products Manufacturer	Level 1: $2,440.00 Level 2: $3,680.00 Level 3: $4,880.00	Level 1: $610.00 Level 2: $920.00 Level 3: $1,220.00	Level 1: $3,050.00 Level 2: $4,600.00 Level 3: $6,100.00
Medical Marijuana Cultivation Facility Class 1 (1-500 plants)	Level 1: $2,440.00 Level 2: $3,680.00 Level 3: $4,880.00	Level 1: $610.00 Level 2: $920.00 Level 3: $1,220.00	Level 1: $3,050.00 Level 2: $4,600.00 Level 3: $6,100.00
Medical Marijuana Testing Facility	Level 1: $2,440.00 Level 2: $3,680.00 Level 3: $4,880.00	Level 1: $610.00 Level 2: $920.00 Level 3: $1,220.00	Level 1: $3,050.00 Level 2: $4,600.00 Level 3: $6,100.00
Medical Marijuana Transporter	$5,520.00	$1,380.00	$6,900.00
Medical Marijuana Business Operator	Level 1: $3,200.00 Level 2: $4,800.00 Level 3: $6,400.00	Level 1: $800.00 Level 2: $1,200.00 Level 3: $1,600.00	Level 1: $4,000.00 Level 2: $6,000.00 Level 3: $8,000.00
Marijuana Research and Development Facility	Level 1: $2,440.00 Level 2: $3,680.00 Level 3: $4,880.00	Level 1: $610.00 Level 2: $920.00 Level 3: $1,220.00	Level 1: $3,050.00 Level 2: $4,600.00 Level 3: $6,100.00

2. Retail Marijuana Businesses.

License Type	Application Fee	License Fee	Total Due at Application
Retail Marijuana Store	$5,000.00	Level 1: $2,850.00 Level 2: $5,550.00 Level 3: $8,200.00	**State Check** Level 1: $5,350.00 Level 2: $8,050.00 Level 3: $10,700.00 **Local Check** $2,500.00
Retail Marijuana Products Manufacturer	$5,000.00	Level 1: $2,200.00 Level 2: $4,550.00 Level 3: $6,900.00	**State Check** Level 1: $4,700.00 Level 2: $7,050.00 Level 3: $9,400.00 **Local Check** $2,500.00
Retail Marijuana Cultivation Facility Tier 1 (1-1,800 plants)	$5,000.00	Level 1: $2,200.00 Level 2: $4,550.00 Level 3: $6,900.00	**State Check** Level 1: $4,700.00 Level 2: $7,050.00 Level 3: $9,400.00 **Local Check** $2,500.00
Retail Marijuana Testing Facility	$1,000.00	Level 1: $2,000.00 Level 2: $3,250.00 Level 3: $4,500.00	**State Check** Level 1: $2,500.00 Level 2: $3,750.00 Level 3: $5,000.00 **Local Check** $500.00

Retail Marijuana Transporter	$1,000.00	$5,850.00	**State Check** $6,350.00 **Local Check** $500.00
Retail Marijuana Business Operator	$1,000.00	Level 1: $2,950.00 Level 2: $4,700.00 Level 3: $6,400.00	**State Check** Level 1: $3,450.00 Level 2: $5,200.00 Level 3: $6,900.00 **Local Check** $500.00
Marijuana Hospitality	$1,000.00	$1,350.00	**State Check** $1,850.00 **Local Check** $500.00
Retail Marijuana Hospitality and Sales Business	$5,000.00	$2,850.00	**State Check** $5,350.00 **Local Check** $2,500.00

B. Regulated Marijuana Business Renewal Application and License Renewal Fees.

1. Medical Marijuana Businesses.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Medical Marijuana Store	$1,840.00	$460.00	$2,300.00
Medical Marijuana Products Manufacturer	$1,840.00	$460.00	$2,300.00
Medical Marijuana Cultivation Facility Class 1 (1-500 plants)	$1,840.00	$460.00	$2,300.00
Class 2 (501-1,500 plants)	$2,680.00	$670.00	$3,350.00
Class 3 (1,501-3,000 plants)	$3,960.00	$990.00	$4,950.00
Expanded Production Management (The amount shown is charged in addition to the Class 3 fee for each class of 3,000 plants over Class 3)	$840.00	$210.00	$1,050.00

Medical Marijuana Testing Facility	$1,840.00	$460.00	$2,300.00
Medical Marijuana Transporter (every 2 years)	$4,880.00	$1,220.00	$6,100.00
Medical Marijuana Business Operator	$2,560.00	$640.00	$3,200.00
Marijuana Research and Development Facility	$1,840.00	$460.00	$2,300.00

2. Retail Marijuana Businesses.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Retail Marijuana Store	$1,840.00	$460.00	$2,300.00
Retail Marijuana Products Manufacturer	$1,840.00	$460.00	$2,300.00
Retail Marijuana Cultivation Facility Tier 1 (1-1,800 plants)	$1,840.00	$460.00	$2,300.00
Tier 2 (1,801-3,600 plants)	$2,680.00	$670.00	$3,350.00
Tier 3 (3,601-6,000 plants)	$3,440.00	$860.00	$4,300.00
Tier 4 (6,001-10,200 plants)	$5,000.00	$1,250.00	$6,250.00
Tier 5 (10,201-13,800 plants)	$7,120.00	$1,780.00	$8,900.00
Expanded Production Management (The amount shown is charged in addition to the Tier 5 fee for each additional tier of 3,600 plants over Tier 5)	$840.00	$210.00	$1,050.00
Retail Marijuana Testing Facility	$1,840.00	$460.00	$2,300.00
Retail Marijuana Transporter	$4,880.00	$1,220.00	$6,100.00
Retail Marijuana Business Operator	$2,560.00	$640.00	$3,200.00
Marijuana Hospitality Business	$1,040.00	$260.00	$1,300.00
Retail Marijuana Hospitality and Sales Business	$1,840.00	$460.00	$2,300.00

C. Requests for a Finding of Suitability, Owner License and Owner Identification Badge – Initial Application and Renewal Fees.

1. Levels. The fee for Owner Entities corresponds to the number of Controlling Beneficial Owners of the licensed Regulated Marijuana Business created through the Owner Entity, in accordance with Rule 2-235(A)(2)(a).

2. Requests for Finding of Suitability Fees.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Controlling Beneficial Owner - Natural Person	$680.00	$170.00	$850.00
Controlling Beneficial Owner – Natural Person – Social Equity (applies to Applicant seeking to be found suitable as a Social Equity Licensee)	$680.00	$170.00	$850.00
Passive Beneficial Owner	$680.00	$170.00	$850.00
Owner Entity:			
Level 1: One (1) to four (4) Controlling Beneficial Owners and/or Owner Entities	$680.00	$170.00	$850.00
Level 2: Five (5) to nine (9) Controlling Beneficial Owners and/or Owner Entities	$1,040.00	$260.00	$1,300.00
Level 3: Ten (10) or more Controlling Beneficial Owners and/or Owner Entities	$1,360.00	$340.00	$1,700.00
Controlling Beneficial Owner - Publicly Traded Corporation (PTC)	$16,720.00	$4,180.00	$20,900.00
Controlling Beneficial Owner - Qualified Private Fund – Qualified Institutional Investor	$3,400.00	$850.00	$4,250.00
Controlling Beneficial Owner - Trust	$3,400.00	$850.00	$4,250.00

3. License Renewal Fees.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Owner Individual Licensees, Passive Beneficial Owners who elect to be found suitable for licensure as an Owner	$440.00	$110.00	$550.00
Owner Entities			
Level 1: One (1) to four (4) Controlling Beneficial Owners	$440.00	$110.00	$550.00

and/or Owner Entities			
Level 2: Five (5) to nine (9) Controlling Beneficial Owners and/or Owner Entities	$660.00	$165.00	$825.00
Level 3: Ten (10) or more Controlling Beneficial Owners and/or Owner Entities	$880.00	$220.00	$1,100.00
Controlling Beneficial Owner – Publicly Traded Corporation (PTC)	$4,000.00	$1,000.00	$5,000.00
Controlling Beneficial Owner – Qualified Private Fund – Qualified Institutional Investor – Trust	$1,600.00	$400.00	$2,000.00

D. Employee License – Initial Fees and Renewal Fees.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Employee License	$120.00	$30.00	$150.00
Conditional Employee License	$160.00	$40.00	$200.00
Employee License Renewal	$80.00	$20.00	$100.00

E. Temporary Appointee Registration – Request for Finding of Suitability Fees and Renewal Fees.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Temporary Appointee Registration (Natural Person)	$240.00	$60.00	$300.00
Temporary Appointee Registration (Entity)	$840.00	$210.00	$1,050.00
Temporary Appointee Registration (Natural Person) Renewal	$240.00	$60.00	$300.00
Temporary Appointee Registration (Entity) Renewal	$680.00	$170.00	$850.00

F. Other Application Fees. The following other fees apply:

1. Permits.

License Type	**Total Due at Application**
Transition Permit:	$350.00
Delivery Permit:	$5,250.00

Delivery Permit Renewal:	$2,650.00
Centralized Distribution Permit	$50.00
Off-Premises Storage Facility Permit	$2,000.00
R&D Co-Location Permit	$100.00

2. Changes of Ownership - Fees. The following fees apply per a Regulated Marijuana Business License.

License Type	**Total Due with Submission**
Change of Controlling Beneficial Owner:	
Involving up to four (4) Controlling Beneficial Owners and/or Owner Entities, (i.e. buyers and sellers)	$2,800.00
Involving five (5) to nine (9) Controlling Beneficial Owners and/or Owner Entities, (i.e. buyers and sellers)	$4,900.00
Involving ten (10) or more Controlling Beneficial Owners and/or Owner Entities, (i.e. buyers and sellers)	$6,350.00
Changes Exempt from a Change of Ownership not involving a reallocation	$1,150.00
Changes Exempt from a Change of Ownership involving a reallocation	$2,000.00

3. Applications to Modify - Fees. The following fees apply per a Regulated Marijuana Business License.

License Type	**Total Due at Application**
Modification of Premises Fee (MOP)	$150.00
Request Fee (for Tier Increase / Class Increase)	$300.00
Change of Trade Name (COTN)	$100.00
Change of Location (COL)	$650.00
Security Waiver	$600.00
Contingency Plan	$1,300.00

4. Other Fees.

License Type	Application Fee	License Fee	Total Due at Application
Reduced Testing Allowance Certification (effective January 8, 2024)	$4,000.00	$0	$4,000.00
Duplicate Business License	$50.00	$0	$50.00
Duplicate Owner/Employee License	$50.00	$0	$50.00
Reinstatement Fee	$350.00	$0	$350.00
Responsible Vendor Program Provider:			
Responsible Vendor Program Provider Initial Application	$1,100.00	$0	$1,100.00
Duplicate Responsible Vendor Program Provider Certificate	$100.00	$0	$100.00
Responsible Vendor Program Provider Renewal	$360.00	$90.00	$450.00
R&D Project Proposal Fee	$650.00	$0	$650.00
Security Waiver Renewal Fee	$300.00	$0	$300.00

G. When Fees are Due. All fees in this Rule are due at the time the application or request is submitted.

Basis and Purpose – 2-206

The statutory basis for this rule includes but is not limited to sections 44-10-103, 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(b), 44-10-203(2)(h), 44-10-203(2)(q), 44-10-203(2)(w), 44-10-203(2)(dd)(XII), 44-10-303(2)(b), 44-10-308(5); 44-10-310(7), 44-10-313, 44-10-401, 44-10-801, 44-10-802, 44-10-803, 44-10-1201, 44-10-1202, C.R.S. The purpose of this rule is to establish fees required for applications, renewals, licenses fees, permits, and other fees required to accompany applications and submissions to the Division by Social Equity Licensees.

2-206 – Social Equity Fees

A. When Reduced Fees Apply. Reduced fees apply to Licensees who have been found suitable as a Social Equity Licensee pursuant to Rule 2-220(C) under the following circumstances:

1. The first Owner Entity initial finding of suitability application submitted by the Social Equity Licensee;

2. The first and second initial Regulated Marijuana Business License applications submitted by the Licensee;

3. The first and second initial delivery permit applications submitted by the Licensee (if applicable);

4. The first renewal after July 1, 2023 of any two Regulated Marijuana Business Licenses issued;

5. The first renewal after July 1, 2023 of any two delivery permits issued;

6. The first renewal after July 1, 2023 of one Owner Entity License issued; and

7. The first renewal after July 1, 2023 of one Owner License issued.

B. Finding of Suitability Requests and Owner License Renewals.

1. Finding of Suitability Requests Fees.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Controlling Beneficial Owner – Natural Person – Social Equity (applies to Applicant seeking to be found suitable as a Social Equity Licensee)	$680.00	$170.00	$850.00
Controlling Beneficial Owner – Owner Entity	$160.00	$40.00	$200.00

2. Controlling Beneficial Owner License Renewal Fees.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Controlling Beneficial Owner Licensees, including Passive Beneficial Owners electing to be subject to licensure	$120.00	$30.00	$150.00
Controlling Beneficial Owner – Owner Entity	$120.00	$30.00	$150.00

C. Retail Marijuana Business – Initial and Renewal Application and License Fees.

1. Initial Application and License Fees.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Retail Marijuana Store	$0	$1,350.00	$1,350.00
Retail Marijuana Products Manufacturer	$0	$1,200.00	$1,200.00
Retail Marijuana Cultivation Facility – Tier 1	$0	$1,200.00	$1,200.00
Retail Marijuana Testing Facility	$0	$650.00	$650.00
Retail Marijuana Transporter	$0	$1,600.00	$1,600.00
Retail Marijuana Business Operator	$0	$850.00	$850.00
Marijuana Hospitality Business	$0	$450.00	$450.00
Retail Marijuana Hospitality and Sales Business	$0	$1,350.00	$1,350.00

2. Renewal Application and License Fees.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Retail Marijuana Store	$480.00	$120.00	$600.00
Retail Marijuana Products Manufacturer	$480.00	$120.00	$600.00
Retail Marijuana Cultivation Facility Tier 1 (1 - 1,800 Plants)	$480.00	$120.00	$600.00
Tier 2 (1,801 – 3,600 Plants)	$680.00	$170.00	$850.00
Tier 3 (3,601 – 6,000 Plants)	$880.00	$220.00	$1,100.00
Tier 4 (6,001 – 10,200 Plants)	$1,240.00	$310.00	$1,550.00
Tier 5 (10,201 – 13,800 Plants)	$1,800.00	$450.00	$2,250.00
Expanded Production Management (The amount shown is charged in addition to the Tier 5 fee for each additional 3,600 plans after Tier 5)	$200.00	$50.00	$250.00
Retail Marijuana Testing Facility	$480.00	$120.00	$600.00
Retail Marijuana Transporter (every 2 years)	$1,240.00	$310.00	$1,550.00
Retail Marijuana Business Operator	$640.00	$160.00	$800.00
Marijuana Hospitality Business	$280.00	$70.00	$350.00
Retail Marijuana Hospitality and Sales Business	$480.00	$120.00	$600.00

D. Medical Marijuana Business – Initial and Renewal Application and License Fees.

1. Initial Application and License Fees.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Medical Marijuana Store	$1,600.00	$400.00	$2,000.00
Medical Marijuana Products Manufacturer	$600.00	$150.00	$750.00
Medical Marijuana Cultivation Facility – Class 1	$600.00	$150.00	$750.00
Medical Marijuana Testing Facility	$600.00	$150.00	$750.00
Medical Marijuana Transporter	$1,400.00	$350.00	$1,750.00
Medical Marijuana Business Operator	$800.00	$200.00	$1,000.00

Marijuana Research and Development Facility	$600.00	$150.00	$750.00

2. Renewal Application and License Fees.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Medical Marijuana Store	$480.00	$120.00	$600.00
Medical Marijuana Products Manufacturer	$480.00	$120.00	$600.00
Medical Marijuana Cultivation Facility – Class 1	$480.00	$120.00	$600.00
Class 2	$680.00	$170.00	$850.00
Class 3	$1,000.00	$250.00	$1,250.00
Expanded Production Management (The amount shown is charged in addition to the Class 3 fee for each class of 3,000 plants over Class 3)	$200.00	$50.00	$250.00
Medical Marijuana Testing Facility	$480.00	$120.00	$600.00
Medical Marijuana Transporter (every 2 years)	$1,240.00	$310.00	$1,550.00
Medical Marijuana Business Operator	$640.00	$160.00	$800.00
Marijuana Research and Development Facility	$480.00	$120.00	$600.00

E. Delivery Permit Fees.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Delivery Permit	$1,300.00	$0	$1,300.00
Delivery Permit Renewal	$650.00	$0	$650.00

F. When Fees are Due. All fees in this Rule are due at the time the application or request is submitted.

COLORADO
Department of Revenue
Marijuana Enforcement Division

COLORADO DEPARTMENT OF REVENUE
MARIJUANA ENFORCEMENT DIVISION

Emergency Rule Adoption

New and Amended Rules, 1 CCR 212-3

2-205 - Fees

2-206 - Social Equity Fees

Statement of Emergency Justification

Pursuant to sections 24-4-103 and 44-10-203, C.R.S., I, Heidi Humphreys, Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt amended and new Rules 2-205 and 2-206 1 CCR 212-3 (Emergency Rules) attached hereto to adjust application and license fees.

Section 24-4-103(6), C.R.S., authorizes the State Licensing Authority to issue an emergency rule if the State Licensing Authority finds that the immediate adoption of the rule is imperatively necessary to comply with state law, federal law, or for the preservation of public health, safety, or welfare, and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest. I find: (1) the immediate adoption of this amended rule and the new rule is necessary to comply with the constitutional and statutory mandates of the Colorado Marijuana Code, sections 44-10-101 *et seq.*, C.R.S.; and (2) compliance with the notice and public hearing requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

Statutory Authority

The State Licensing Authority promulgates these Emergency Rules pursuant to the authority granted in the Colorado Constitution, Article XVIII, Sec. 16, the Colorado Marijuana Code, sections 44-10-101 *et seq.*, C.R.S., and the state Administrative Procedure Act, section 24-4-103, C.R.S. The statutory authority for the Emergency Rules is identified in the statement of basis and purpose preceding the rules, which includes but is not limited to sections 44-10-103, 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(i) 44-10-203(1)(k), 44-10-203(2)(b), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(2)(o), 44-10-203(2)(q), 44-10-203(2)(r), 44-10-203(2)(s), 44-10-203(2)(w), 44-10-203(2)(dd)(XII), 44-10-203(2)(ff), 44-10-203(2)(gg), 44-10-303(2)(b), 44-10-310(7), 44-10-313, 44-10-401, 44-10-801, 44-10-802, 44-10-803, 44-10-1201, 44-10-1202, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish and amend fees required for applications, renewals, licenses, permits, and other fees required to accompany applications and submissions to the Division.

Purpose for Emergency Rule

The purpose of this Emergency Rule is to re-adopt existing emergency rules without substantive amendments. The Emergency Rules: 1) amend Rule 2-205, which currently

contains all fees owed by applicants and licensees upon application to the Marijuana Enforcement Division ("the Division") for a license, certificate, permit, or other privilege as authorized in the Marijuana Code and Rules; and 2) adopt Rule 2-206, outlining new fees for Social Equity Licensees. The State Licensing Authority has concurrently held stakeholder workgroups related to the permanent rulemaking process for these fee rules, but the Permanent Fee Rules will not be in place prior to the expiration of the existing emergency rules on October 27, 2023. As a result, adopting this second set of emergency rules is necessary to allow for the completion of the permanent rulemaking process.

The Division's operations are primarily fee funded and fees collected by the State Licensing Authority are transmitted to the Marijuana Cash Fund established in section 44-10-801(1)(a), C.R.S. Further, section 44-10-801, C.R.S., requires that the amount of fees collected reflect the actual direct and indirect costs of the State Licensing Authority in the administration of the Colorado Marijuana Code, at sections 44-10-101, C.R.S., *et seq*. and that the State Licensing Authority review fees at least annually, and if necessary, adjust fees to reflect the direct and indirect costs.

In 2019, the Division engaged in a third party analysis to align with section 44-10-801, C.R.S. In 2020, the Division terminated fee rulemaking to ensure the Division had the resources necessary to conduct pandemic related emergency rulemaking to support licensees' compliance with public health orders. In 2021, the Division restored license fees that had been reduced in 2016, which included the issuance of a cost-benefit analysis. This cost-benefit analysis informed the reinstatement of fees was part of incremental efforts in response to a $3.5 million projected shortfall between fiscal years 2021-2022.

Since that time, the Division has continued to face significant challenges including inflation and increased complexity of work that supports industry innovation, while navigating an evolving regulatory framework. Despite continued efforts to improve efficiency and reduce expenditures, the Division faces a negative cash fund balance at the end of the 2022-2023 fiscal year.

Effective date of Emergency Rules and Permanent Rulemaking

The attached Emergency Rules are effective **October 27, 2023**.

Pursuant to section 24-4-103(6), C.R.S., of the Colorado Administrative Procedure Act, the Emergency Rules remain in effect for 120 days from the date of adoption or until repealed by the State Licensing Authority upon filing of a notice of such with the Secretary of State.

On June 5, 2023, July 31, 2023 and October 16, 2023 the State Licensing Authority hosted a stakeholder meeting to discuss the Emergency Rules and proposed permanent rules to adjust application and licensing fees. The State Licensing Authority initiated the permanent rulemaking process pursuant to the Colorado Administrative Procedure Act, section 24-4-103, C.R.S., on June 29, 2023 by filing the Notice of Permanent Rulemaking with the Secretary of State. As part of that permanent rulemaking process, the Division and State Licensing Authority has facilitated additional stakeholder work group meetings

and will facilitate the permanent rulemaking hearing to solicit and gather public comment, which will be part of the permanent rulemaking record.

Additional information regarding the Division's permanent rulemaking session can be accessed on the Division's website.

Statement of Adoption

Pursuant to the Colorado Administrative Procedure Act, Title 24, Article 4, of the Colorado Revised Statutes, I, Heidi Humphreys, Executive Director of the Colorado Department of Revenue, State Licensing Authority, promulgate the following rules to become effective on October 27, 2023.

Part 2 – APPLICATIONS AND LICENSES

2-205 - Fees

2-206 - Social Equity Fees

Heidi Humphreys
Executive Director
Colorado Department of Revenue
State Licensing Authority

October 27, 2023
Date

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Tracking number: 2023-00725

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

Marijuana Enforcement Division

on 10/27/2023

1 CCR 212-3

COLORADO MARIJUANA RULES

The above-referenced rules were submitted to this office on 10/30/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 13, 2023 13:31:03

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Emergency Rules Adopted

Department

Department of Revenue

Agency

Marijuana Enforcement Division

CCR number

1 CCR 212-3

Rule title

1 CCR 212-3 COLORADO MARIJUANA RULES 1 - eff 10/27/2023

Effective date

10/27/2023

Expiration date

02/24/2024

Part 2 – Applications and Licenses

2-200 Series – Applications and Licenses Rules

Basis and Purpose – 2-220

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(1)(j), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(w), 44-10-203(2)(ee), 44-10-203(7), 44-10-301, 44-10-305, 44-10-307, 44-10-308, 44-10-309, 44-10-310, 44-10-311, 44-10-312, 44-10-313, and 44-10-316, C.R.S. The purpose of this rule is to establish the general requirements and processes for submission of an initial application for a Regulated Marijuana Business to the State Licensing Authority.

2-220 – Initial Application Requirements for Regulated Marijuana Businesses

A. Documents and Information Requested. Every initial application for a Regulated Marijuana Business License must include all required documents and information including, but not limited to:

1. A copy of the local license application, if required, for a Regulated Marijuana Business.

2. Certificate of Good Standing from the jurisdiction in which the Entity was formed, which must be one of the states of the United States, territories of the United States, District of Columbia, or another country that authorizes the sale of marijuana.

3. If the Applicant is an Entity, the identity and physical address of its registered agent in the state of Colorado.

4. Organizational Documents. Articles of Incorporation, by-laws, and any shareholder agreement for a corporation; articles of organization and operating agreement for a limited liability company; or partnership agreement for a partnership.

5. Corporate Governance Documents.

   a. A Regulated Marijuana Business that is a Publicly Traded Corporation must maintain corporate governance documents as required by the securities exchange on which its securities are listed and traded, and section 44-10-103(50), C.R.S., and must provide those corporate governance documents with each initial application.

   b. A Regulated Marijuana Business that is not a Publicly Traded Corporation is not required to maintain any corporate governance documents. However, if the Regulated Marijuana Business that is not a Publicly Traded Corporation voluntarily maintains corporate governance documents, the Division encourages inclusion of such documents with each initial application.

6. The deed, lease, sublease, rental agreement, contract, or any other document(s) establishing the Applicant is, or will be, entitled to possession of the premises for which the application is made.

7. Legible and accurate diagram for the facility. The diagram must include a plan for the Licensed Premises and a separate plan for the security/surveillance plan including camera location, number and direction of coverage. If the diagram is larger than 8.5 x 11 inches, the Applicant must also provide a copy of the diagram in a portable document format (.pdf).

8. All required findings of suitability issued by the Division.

9. If the Applicant is a Publicly Traded Corporation:

   a. Documents establishing the Publicly Traded Corporation qualifies to hold a Regulated Marijuana Business License including but not limited to disclosure of securities exchange(s) on which its Securities are listed and traded, the stock symbol(s), the identity of all regulators with regulatory oversight over its Securities; and

   b. Divestiture plan for any Controlling Beneficial Owner that is a Person prohibited by the Marijuana Code, has had her or his Owner License revoked, or has been found unsuitable.

10. Financial Statements. Consolidated financial statements (which may be prepared on either a calendar or fiscal year basis) that were prepared in the preceding 365 days, and which must include a balance sheet, an income statement, and a cash flow statement. If the Applicant or Regulated Marijuana Business is required to have audited financial statements by another regulator (e.g. United States Securities and Exchange Commission or the Canadian Securities Administrators) the financial statements provided to the Division must be audited and must also include all footnotes, schedules, auditors' report(s), and auditor's opinion(s). If the financial statements are publicly available on a website (e.g. EDGAR or SEDAR), the Applicant or Regulated Marijuana Business may provide notification of the website link where the financial statements can be accessed in lieu of hardcopy submission.

11. Tax Documents. While duplicate tax documentation is not required to be provided with the application, the Applicant shall cooperate with the Division to establish proof of compliant return filing and payment of taxes related to any Regulated Marijuana Business in which the Person is, or was, required to file and pay taxes.

B. Local Licensing/Approval Required.

1. Regulated Marijuana Business Local Licensing Authority Approval Required.

   a. If the Division grants a license to a Regulated Marijuana Business before the Local Licensing Authority or Local Jurisdiction approves the application or grants a local license, the state license will be conditioned upon local approval. If the Local Licensing Authority denies the application, the state license will be revoked.

   b. An Applicant is prohibited from operating a Regulated Marijuana Business prior to obtaining all necessary licenses, registrations, permits, or approvals from both the State Licensing Authority and the Local Licensing Authority or Local Jurisdiction.

2. Retail Marijuana Business One Year to Obtain Local Jurisdiction Approval Required.

   a. The Applicant has one year from the date of licensing by the State Licensing Authority to obtain approval or licensing from the Local Jurisdiction.

   b. If the Applicant fails to obtain Local Jurisdiction approval or licensing within one year from grant of the state license, the state license may ~~expires and may not~~ be renewed in accordance with Rule 2-225(G)(2).

C. Social Equity License Qualification.

1. A natural person who can establish he or she qualifies as a Social Equity Licensee may apply for either a Regulated Marijuana Business License or an Accelerator License.

2. Qualifications. To qualify as a Social Equity Licensee, the Applicant must be found suitable for licensure pursuant to Rule 2-235, unless otherwise exempted by these Rules, and must meet the following minimum eligibility requirements:

   a. The Applicant is a Colorado Resident and has established Colorado residency by providing the items required by Rule 2-265(H).

   b. The Applicant has not been the Beneficial Owner of a License subject to administrative action issued by the State Licensing Authority resulting in the revocation of a license issued pursuant to the Marijuana Code;

   c. The Applicant has demonstrated at least one of the following:

      i. The Applicant has resided for at least fifteen years between the years 1980 and 2010 in a census tract designated by the office of economic development and international trade as an opportunity zone or a census tract designated as a Disproportionate Impacted Area;

      ii. The Applicant or the Applicant's parent, legal guardian, sibling, spouse, child, or minor in their guardianship was arrested for a marijuana offense, convicted of a marijuana offense, or was subject to civil asset forfeiture related to a marijuana investigation; or

      iii. The Applicant's household income in the year prior to application did not exceed 50% of the state median income as measured by the number of people who reside in the Applicant's household.

   d. The Social Equity Licensee, or collectively one or more Social Equity Licensees, holds at least fifty-one percent of the Beneficial Ownership of the Regulated Marijuana Business License.

3. Information Required to Establish Qualification as a Social Equity Licensee.

   a. To demonstrate qualification as a Social Equity Licensee based on residence during the relevant time period, the Applicant must demonstrate the Applicant's residency which may include either:

      i. Providinge information or documents including but not limited to a copy of school records, rental agreements, lease agreements, utility bills, mortgage statements, loan documents, bank records, tax returns, or any other document which proves the Applicant's place of residence; or

ii. Affirming, under penalty of perjury, the Applicant's place of residence and provide the name(s) and contact information for at least one individual who can verify the Applicant's place of residence during the time period at issue.

b. To demonstrate that an Applicant qualifies as a Social Equity Licensee based on a prior marijuana conviction of a family member, the Applicant must provide affirmation of the familial relationship, and court or other documents demonstrating the family member's arrest or conviction for a marijuana offense or that the family member was subject to a civil asset forfeiture related to a marijuana investigation.

c. To demonstrate that an Applicant qualifies as a Social Equity Licensee based on the Applicant's income, the Applicant must provide the Applicant's tax return for the prior year. If an Applicant applies between January 1 and April 15 but has not yet filed a tax return, the application may be delayed or denied until the tax return is filed and provided to the Division. The Division cannot accept tax returns for previous years.

4. Denial of an Application on the Basis of a Marijuana Conviction. The State Licensing Authority will not deny an application for a Social Equity License or a related request for a finding of suitability on the sole basis of a marijuana conviction.

D. Accelerator License Application and Qualification.

1. License Issuance.

a. Beginning January 1, 2021, a Social Equity Licensee may apply for an Accelerator License. The application shall be made on Division forms and in accordance with the 2-200 Series Rules.

b. An Accelerator Licensee may exercise the privileges of a Retail Marijuana Cultivation Facility License, Retail Marijuana Products Manufacturer License, or Retail Marijuana Store License on the Licensed Premises of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, or Retail Marijuana Store that has been approved as an Accelerator-Endorsed Licensee or on a Licensed Premises under the control of the Accelerator-Endorsed Licensee.

2. Qualifications. To qualify for an Accelerator License, an Applicant must:

a. Be found suitable for licensure pursuant to Rule 2-235, unless otherwise exempted by these Rules; and

b. Be approved as a Social Equity Licensee pursuant to this Rule.

3. Information Required to Establish Qualification as an Accelerator Licensee. To establish that an Applicant qualifies as an Accelerator Licensee, he or she must establish:

a. Qualification as a Social Equity Licensee; and

b. An affirmation that the Applicant has not been the Beneficial Owner of a Regulated Marijuana Business License issued pursuant to the Marijuana Code.

Basis and Purpose – 2-225

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(2)(a), 44-10-203(2)(c), 44-10-203(2)(w), 44-10-203(2)(ee), 44-10-203(7), 44-10-305(2)(b)(I)(C), 44-10-307, 44-10-308, 44-10-309, 44-10-313, 44-10-314, and 44-10-316 C.R.S. The purpose of this rule is to establish the requirements and procedures for the license renewal process, including the circumstances under which an expired license may be reinstated.

2-225 – Renewal Application Requirements for All Licensees

A. License Periods.

1. Regulated Marijuana Business and Owner Licenses are valid for one year from the date of issuance.

2. Medical Marijuana Transporters, Retail Marijuana Transporters, and Employee Licenses are valid for two years from the date of issuance.

B. Division Notification Prior to Expiration.

1. The Division will send a notice of license renewal 90 days prior to the expiration of an existing Regulated Marijuana Business or Owner License by first class mail to the Licensee's physical address of record.

2. Failure to receive the Division notification does not relieve the Licensee of the obligation to timely renew the license.

C. Renewal Deadline.

1. A Licensee must apply for the renewal of an existing license prior to the License's expiration date.

2. A renewal application submitted to the Division prior to the license's expiration date shall be deemed timely pursuant to subsection 24-4-104(7), C.R.S., and the Licensee may continue to operate until Final Agency Order on the renewal application.

D. If License Not Renewed Before Expiration. A license is immediately invalid upon expiration if the Licensee has not filed a renewal application and remitted all of the required application and license fees prior to the license expiration date. A Regulated Marijuana Business that fails to file a renewal application and remit all required application and license fees prior to the license expiration date must not operate unless it first obtains a new state license and any required local license.

1. Reinstatement of Expired Regulated Marijuana Business License. A Regulated Marijuana Business that fails to file a renewal application and remit all required application and license fees prior to the license expiration date may request that the Division reinstate an expired license only in accordance to the following:

a. The Regulated Marijuana Business license expired within the previous 30 days;

b. The Regulated Marijuana Business License has submitted an initial application pursuant to Rule 2-220. The initial application must be submitted prior to, or concurrently with, the request for reinstatement;

c. The Regulated Marijuana Business has paid the reinstatement fee in Rule 2-205; and

d. Any license or approval from the Local Licensing Authority or Local Jurisdiction is still valid or has been obtained.

2. Reinstatement Not Available for Surrendered or Revoked Licenses. A request for reinstatement cannot be submitted and will not be approved for a Regulated Marijuana Business ~~l~~License that was surrendered or revoked.

3. Reinstatement Not Available for Owner Licenses or Employee Licenses. A request for reinstatement cannot be submitted and will not be approved for expired, surrendered, or revoked Owner Licenses or Employee Licenses.

4. Denial of Request for Reinstatement or Administrative Action. If the Licensee requesting reinstatement of a Regulated Marijuana Business L~~l~~icense operated during a period that the license was expired, the request may be subject to denial and the Licensee may be subject to administrative action as authorized by the Marijuana Code or these Rules.

5. Approval of Request for Reinstatement. Upon approval of any request for reinstatement of an expired Regulated Marijuana Business License, the Licensee may resume operations until the final agency action on the Licensee's initial application for a Regulated Marijuana Business L~~l~~icense.

a. Approval of a request for reinstatement of an expired Regulated Marijuana Business ~~l~~License does not guarantee approval of the Regulated Marijuana Business Licensee's initial application; and

b. Approval of a request for reinstatement of an expired ~~l~~License does not waive the State Licensing Authority's authority to pursue administrative action on the expired L~~l~~icense or initial application for a Regulated Marijuana Business L~~l~~icense.

6. Final Agency Order on Initial Application for Regulated Marijuana Business.

a. If the initial application for a Regulated Marijuana Business L~~l~~icense submitted pursuant to this Rule is approved, the new Regulated Marijuana Business ~~l~~License will replace the reinstated ~~l~~License.

b. If the initial application for a Regulated Marijuana Business L~~l~~icense submitted pursuant to this Rule is denied, the Licensee must immediately cease all operations including but not limited to, Transfer of Regulated Marijuana. *See* Rule 2-270 – Application Denial and Voluntary Withdrawal; 8-115 – Disposition of Unauthorized Regulated Marijuana; 8-130 – Administrative Warrants.

E. Voluntarily Surrendered or Revoked Licenses Not Eligible for Renewal. Any L~~l~~icense that was voluntarily surrendered or that was revoked by a Final Agency Order is not eligible for renewal. Any Licensee who voluntarily surrendered its license or has had its L~~l~~icense revoked by a Final Agency Order may only submit an initial application. The State Licensing Authority will consider the voluntary surrender or the Final Agency Order and all related facts and circumstances in determining approval of any subsequent initial application.

F. Licenses Subject to Ongoing Administrative Action. Licenses subject to an administrative action are subject to the requirements of this Rule. Licenses that are not timely renewed expire and cannot be renewed.

G. Documents Required at Renewal. A Regulated Marijuana Business and all Controlling Beneficial Owner-Entities must provide the following documents with every renewal application:

1. Any document required by Rule 2-220(A)(1) through (9) that has changed since the document was last submitted to the Division. It is a license violation affecting public safety to fail to submit any document that changed since the last submission for the purpose of circumventing the requirements of the Marijuana Code, or these Rules;

2. A copy of the Local Licensing Authority or Local Jurisdiction approval, licensure, and/or documentation demonstrating timely submission of and pending local license renewal application;

   a. For initial renewal applications submitted after August 8, 2023, the State Licensing Authority may renew a License that has not yet received Local Licensing Authority approval prior to the expiration of the state-issued License if:

      i. The Applicant submits a renewal application in accordance with this Rule; and

      ii. The Applicant submits written documentation that demonstrates the Licensee has taken action to obtain local approval and demonstrates why local approval has not yet been obtained or a local license issued.

3. A list of any sanctions, penalties, assessments, or cease and desist orders imposed by any securities regulatory agency, including but not limited to the United States Securities and Exchange Commission or the Canadian Securities Administrators;

4. A Regulated Marijuana Business operating under a single Entity name with more than one License may submit the following documents only once each calendar year on the first license renewal in lieu of submission with every license renewal in the same calendar year:

   a. Financial statements required by Rule 2-220(A)(10);

   b. If the Regulated Marijuana Business is a Publicly Traded Corporation, the most recent list of Non-Objecting Beneficial Owners possessed by the Regulated Marijuana Business;

   c. A copy of all management agreement(s) the Regulated Marijuana Business has entered into regardless of whether the Person is licensed or unlicensed; and

   d. Contracts, agreements, royalty agreements, equipment leases, financing agreements, or security contracts for any Indirect Financial Interest Holder that is required to be disclosed by Rule 2-230(A)(3).

H. Controlling Beneficial Owner Signature. At least one Controlling Beneficial Owner shall sign the renewal application. However, other Controlling Beneficial Owners may be required to sign authorizations and/or requests to release information.

I. Accelerator Program Renewal Application Requirements.

1. Accelerator License Renewal. Accelerator Cultivator, Accelerator Manufacturer, and Accelerator Store Licenses are required to be renewed annually. In addition to the documents and information required to be submitted with a renewal application, an Accelerator Licensee must also disclose to the Division copies of any agreements between the Accelerator Licensee and the Accelerator-Endorsed Licensee under which it operated during the previous year.

2. Accelerator-Endorsed Licensee Additional Renewal Requirements.

   a. An endorsement issued to an Accelerator-Endorsed Licensee is required to be renewed annually.

   b. At the time of submitting a renewal application for the endorsement, an Accelerator-Endorsed Licensee must submit the following:

      i. The name and ~~l~~License number of any Accelerator Licensee for which it served as an Accelerator-Endorsed Licensee during the previous year;

      ii. The equity assistance proposal if there have been any updates or amendments since the proposal was last submitted to the Division;

      iii. Copies of any agreements between the Accelerator-Endorsed Licensee and the Accelerator Licensee(s), including the equity partnership agreement; and

      iv. Any required Local Jurisdiction approvals.

   c. In addition to any other basis for denial of a renewal application, the State Licensing Authority may also consider the following facts and circumstances as additional bases for denial of an endorsement renewal application:

      i. The Accelerator-Endorsed Licensee violated the terms of any equity partnership agreement it entered into with an Accelerator Licensee;

      ii. The Accelerator-Endorsed Licensee ended the equity partnership agreement with an Accelerator Licensee prematurely; and

      iii. The Accelerator-Endorsed Licensee provided false or misleading statements, records, or information to an Accelerator Licensee.

Part 6 – Retail Marijuana Business License Types

6-100 Series – Retail Marijuana Stores

Basis and Purpose – 6-105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(dd), 44-10-313(14), 44-10-401(2)(b)(I), 44-10-601, and 44-10-605, C.R.S. The purpose of this rule is to the license privileges of a Retail Marijuana Store licensee. This Rule 6-105 was previously Rule R 401.

6-105 – Retail Marijuana Store: License Privileges

A. Licensed Premises. To the extent authorized by Rule 3-215 – Regulated Marijuana Business–Shared Licensed Premises and Operational Separation, a Retail Marijuana Store may share, and operate at, the same Licensed Premises with a commonly-owned Medical Marijuana Store. However, a separate ~~l~~License is required for each specific business or business entity, regardless of geographical location.

B. Authorized Sources of Retail Marijuana. A Retail Marijuana Store may only Transfer Retail Marijuana that was obtained from another Retail Marijuana Business.

C. Samples Provided for Testing. A Retail Marijuana Store may provide Samples of its products for testing and research purposes to a Retail Marijuana Testing Facility. The Retail Marijuana Store shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

D. Authorized On-Premises Storage. A Retail Marijuana Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.

E. Authorized Marijuana Transport. A Retail Marijuana Store is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents a Retail Marijuana Store from transporting its own Retail Marijuana.

F. Performance-Based Incentives. A Retail Marijuana Store may compensate its employees using performance-based incentives, including sales-based performance-based incentives.

G. Authorized Transfers of Industrial Hemp Products. This rule is effective July 1, 2020. A Retail Marijuana Store may Transfer Industrial Hemp Product to a consumer only after it has confirmed:

1. That the Industrial Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Retail Marijuana Testing Facility; and

2. That the Person Transferring the Industrial Hemp Product to the Retail Marijuana Store is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

H. Retail Marijuana Store Delivery Permit.

1. Prior to January 2, 2021, all Retail Marijuana Stores are prohibited from delivering Regulated Marijuana to consumers.

2. After January 2, 2021, a Retail Marijuana Store with a valid delivery permit may accept delivery orders deliver Retail Marijuana to consumers pursuant to Rule 3-615.

3. A Retail Marijuana Store that does not possess a valid delivery permit cannot deliver Retail Marijuana.

I. Automated Dispensing Machines: A Retail Marijuana Store may use an automated machine in the Restricted Access Area of its Licensed Premises to dispense Regulated Marijuana to consumers without interaction with an Owner Licensee or Employee Licensee if the automated machine is reasonably monitored and complies with all requirements of these rules including but not limited to:

1. Health and safety standards,

2. Testing,

3. Packaging and labeling requirements,

4. Inventory tracking,

5. Identification requirements, and

6. Transfer limits to consumers.

J. Walk-up Window or Drive-up Window. A Retail Marijuana Store may serve customers through a walk-up window or drive-up window pursuant to the requirements of this R~~r~~ule.

1. Modification of Premises Required. Before accepting orders for sales of Retail Marijuana to a customer through either a walk-up window or drive-up window, a Retail Marijuana Store shall apply for, and obtain approval of, an application for a modification of its Licensed Premises for the addition of a walk-up window or drive-up window.

2. The area immediately outside the walk-up window or drive-up window must be under the Licensee's possession and control and cannot include any public property such as public streets, public sidewalks, or public parking lots.

3. Order and Identification Requirements.

a. Prior to accepting an order or Transferring Retail Marijuana to a customer, the Employee Licensee or Owner Licensee must physically view and inspect the consumer's identification and ensure that the consumer is 21 years of age or older.

b. The Retail Marijuana Store may accept telephone or internet orders or may accept orders from the customer at the walk-up window or drive-up window. ~~Retail Marijuana Stores may not accept payment for Retail Marijuana over the internet.~~

c. All orders received through a walk-up window or a drive-up window must be placed by the customer from a menu. The Retail Marijuana Store may not display Retail Marijuana at the walk-up or drive-up window.

4. Payment Requirements. Cash, credit, debit, cashless ATM, or other payment methods including online payments are permitted ~~for payments~~ for Retail Marijuana at the walk-up window or drive-up window.

5. Video Surveillance Requirements. For every Transfer of Regulated Marijuana through either a walk-up window or drive-up window, the Retail Marijuana Store's video surveillance must enable the recording of the consumer's identity (and consumer's vehicle in the event of drive-up window), and must enable the recording of the Licensee verifying the consumer's identification and completion of the transaction through the Transfer of Regulated Marijuana.

6. Packaging and Labeling Requirements. A Retail Marijuana Store utilizing a walk-up window or drive-up window must ensure that all Retail Marijuana is packaged and labeled in accordance with Rule 3-1010 and Rule 3-1015 prior to Transfer to the consumer.

7. Local Restrictions. Transfers of Regulated Marijuana using a walk-up window or drive-up window are subject to requirements and restrictions imposed by the relevant Local Jurisdiction.

K. Sales over the Internet. A Retail Marijuana Store may accept orders and payment for Retail Marijuana over the internet.

1. Online Order Requirements.

a. Online orders must include the customer's name and date of birth.

b. Prior to accepting the order, the store must provide and the customer must acknowledge receipt of:

i. A digital copy of the pregnancy warning required in Rule 6-115; and

ii. If accepting an order for Retail Marijuana Concentrate, the Retail Marijuana Store must also provide the educational resources required in Rule 6-110(C.5).

c. Licensees must maintain standard operating procedures documenting their compliance with the requirements of this subparagraph (K).

2. Transfer of Retail Marijuana to the customer.

a. A Customer must be physically present on the Licensed Premises to take possession of Retail Marijuana.

b. The Retail Marijuana Store must verify the customer's physical identification matches the name and date of birth the customer provided at the time of the order, and verify that the customer is twenty-one years of age or older, in accordance with these Rules.

3. Delivery. A Retail Marijuana Store that holds a valid delivery permit may make sales of Retail Marijuana over the internet in accordance with Rule 3-615.

4. Approved Sources of Payment. A Retail Marijuana Store may accept payment using any legal method of payment, gift card pre-payments, or pre-payment accounts established with a Retail Marijuana Store, except that any payment with an Electronic Benefits Transfer Services Card is not permitted.

a. A Local Licensing Authority or Local Jurisdiction may further restrict legal methods of payment not expressly permitted by section 44-10-203(2)(dd)(XV), C.R.S.

Basis and Purpose – 6-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(4)(b), 44-10-203(1)(k), 44-10-401(2)(b)(I), 44-10-701(1)(a), 44-10-701(3)(d) and (f), and 44-10-601, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(3)(a), 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a licensed Retail Marijuana Store.

Regarding quantity limitations on sales, equivalencies for Retail Marijuana Concentrate and Retail Marijuana Product to Retail Marijuana flower have been included in this rule pursuant to the mandate of House Bill 14-1361. The establishment of equivalencies also provides information to stakeholders including Licensees, the general public, and law enforcement to aid in the enforcement of and compliance with the lawful personal possession limit of one ounce or less of marijuana. Setting these equivalencies provides Retail Marijuana Stores and their employees with necessary information to avoid being complicit in a patron acquiring more marijuana than is lawful to possess under the Colorado Constitution pursuant to Article XVIII, Subsection 16(3)(a).

This Rule 6-110 was previously Rule R 402, 1 CCR 212-2.

6-110 – Retail Marijuana Sales: General Limitations or Prohibited Acts

A. Sales to Persons Under 21 Years. Licensees are prohibited from Transferring, giving, or distributing Retail Marijuana to persons under 21 years of age. Licensees are prohibited from permitting a person under the age of 21 years of age from entering the Restricted Access Area.

B. Age Verification. Licensees must verify on two separate occasions that a Person is 21 years of age or older. First, prior to permitting a Person to enter the Restricted Access Area, a Licensee must verify that the Person has a valid government-issued photo identification showing that the Person is 21 years of age or older. Second, prior to initiating the Transfer of Retail Marijuana, a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older.

C. Quantity Limitations On Sales.

1. A Retail Marijuana Store and its employees are prohibited from Transferring more than one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product to a consumer in a single transaction. A Retail Marijuana Store may also Transfer up to six (6) seeds in addition to the one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product to a consumer in a single transaction. A single transaction includes multiple Transfers to the same consumer during the same business day where the Retail Marijuana Store employee knows or reasonably should know that such Transfer would result in that consumer possessing more than one ounce of marijuana. In determining the imposition of any penalty for violation of this Rule 6-110(C), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule 8-235(C).

2. Equivalency. Non-edible, non-psychoactive Retail Marijuana Products including ointments, lotions, balms, and other non-transdermal topical products are exempt from the one-ounce quantity limit on Transfers. For all other Retail Marijuana Products or Retail Marijuana Concentrate, the following equivalency applies for the one-ounce quantity Transfer limit:

a. One ounce of Retail Marijuana flower shall be equivalent to eight grams of Retail Marijuana Concentrate.

b. One ounce of Retail Marijuana flower shall be equivalent to 80 ten-milligram servings of THC in Retail Marijuana Product.

C.5. Educational Resource. When completing a sale of Retail Marijuana Concentrate, a Retail Marijuana Store shall provide the consumer with the tangible educational resource created by the State Licensing Authority regarding the use of Regulated Marijuana Concentrate.

D. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Retail Marijuana to a consumer.

E. ~~Sales over the Internet. Only a Retail Marijuana Store holding a valid delivery permit taking orders for delivery may make sales over the internet. Only a Retail Marijuana Store holding a valid delivery permit and/or a Retail Marijuana Transporter holding a valid delivery permit may deliver Retail Marijuana to a private residence. All other Retail Marijuana Store and Retail Marijuana Transporter Licensees are prohibited from selling Retail Marijuana over the internet~~Repealed.

F. Delivery Outside Colorado Prohibited. A Retail Marijuana Store holding a valid delivery permit shall not deliver Retail Marijuana to an address that is outside the state of Colorado.

G. Prohibited Items. A Retail Marijuana Store is prohibited from selling or giving away any consumable product that is not a Retail Marijuana Product or an Industrial Hemp Product

including, but not limited to, cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not Retail Marijuana Product.

H. Free Product Prohibited. A Retail Marijuana Store may not give away Retail Marijuana to a consumer for any reason.

I. Nicotine or Alcohol Prohibited. A Retail Marijuana Store is prohibited from Transferring Retail Marijuana that contain nicotine or alcohol, if the sale of the alcohol would require a license pursuant to Articles 3, 4, or 5 of Title 44, C.R.S.

J. Storage and Display Limitations.

1. A Retail Marijuana Store shall not display Retail Marijuana outside of a designated Restricted Access Area or in a manner in which Retail Marijuana can be seen from outside the Licensed Premises. Storage of Retail Marijuana shall otherwise be maintained in Limited Access Areas or Restricted Access Area.

2. Any Retail Marijuana Concentrate displayed in a Retail Marijuana Store must include the potency of the concentrate on a sign next to the name of the product.

a. The font on the sign must be large enough for a consumer to reasonably see from the location where a consumer would usually view the concentrate.

b. The potency displayed on the sign must be within plus or minus fifteen percent of the concentrate's actual potency.

K. Transfer of Expired Product Prohibited. A Retail Marijuana Store shall not Transfer any expired Retail Marijuana Product to a consumer.

L. Transfer Restriction.

1. Sampling Units. A Retail Marijuana Store may not possess or Transfer Sampling Units.

2. Research Transfers Prohibited. A Retail Marijuana Store shall not Transfer any Retail Marijuana to a Pesticide Manufacturer, or a Marijuana Research and Development Facility.

L.5. Standard Operating Procedures. A Retail Marijuana Store must establish written standard operating procedures for the management and storage of Retail Marijuana inventory and the sale of Retail Marijuana to consumers. A written copy of the standard operating procedures must be maintained on the Licensed Premises.

1. A Retail Marijuana Store must provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.

M. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit.

1. The sale of Edible Retail Marijuana Products in the following shapes is prohibited:

a. The distinct shape of a human, animal, or fruit; or

b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Retail Marijuana Business. Nothing in this subparagraph (M)(2) alters or eliminates a Licensee's obligation to comply with the requirements of the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

3. Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

N. Adverse Health Event Reporting. A Retail Marijuana Store must report Adverse Health Events pursuant to Rule 3-920.

O. Corrective and Preventive Action. This paragraph O shall be effective January 1, 2021. A Retail Marijuana Store shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

P. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

6-1100 Series – Accelerator Store Licenses

Basis and Purpose – 6-1105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(aa), 44-10-203(2)(dd), 44-10-401(2)(b)(I), 44-10-601, 44-10-605, and 44-10-611, C.R.S. The purpose of this rule is to establish the license privileges of an Accelerator Store.

6-1105 – Accelerator Store: License Privileges

A. Licensed Premises.

1. Shared Licensed Premises. An Accelerator Store may operate on the same Licensed Premises as a Retail Marijuana Store that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

2. Separate Licensed Premises. An Accelerator Store may operate on a separate premises in the possession of a Retail Marijuana Store that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

3. To the extent authorized by Rule 3-215 – Regulated Marijuana Business– Shared Licensed Premises and Operational Separation, an Accelerator Store may share, and operate at, the same Licensed Premises as an Accelerator-Endorsed Licensee's Retail Marijuana Store that shares a Licensed Premises with a Medical Marijuana Store.

B. Authorized Sources of Retail Marijuana. An Accelerator Store may only Transfer Retail Marijuana that was obtained from another Retail Marijuana Business.

C. Samples Provided for Testing. An Accelerator Store may provide Samples of its products for testing and research purposes to a Retail Marijuana Testing Facility. The Accelerator Store shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

D. Authorized On-Premises Storage. An Accelerator Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.

E. Authorized Marijuana Transport. An Accelerator Store is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents an Accelerator Store from transporting its own Retail Marijuana.

F. Performance-Based Incentives. An Accelerator Store may compensate its employees using performance-based incentives, including sales-based performance-based incentives.

G. Authorized Transfers of Industrial Hemp Products. An Accelerator Store may Transfer Industrial Hemp Product to a consumer only after it has confirmed:

1. That the Industrial Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Retail Marijuana Testing Facility; and

2. That the Person Transferring the Industrial Hemp Product to the Retail Marijuana Store is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

H. Automated Vending Machine. An Accelerator Store may use an automated machine in the Restricted Access Area of its Licensed Premises to dispense Regulated Marijuana to consumers without interaction with an Owner Licensee or Employee Licensee if the automated machine is reasonably monitored and complies with all requirements of these rules including but not limited to:

1. Health and safety standards,

2. Testing,

3. Packaging and labeling requirements,

4. Inventory tracking,

5. Identification requirements, and

6. Transfer limits to consumers.

I. Walk-up Window or Drive-up Window. An Accelerator Store may serve customers through a walk-up window or drive-up window pursuant to the requirements of this rule.

1. Modification of Premises Required. Before accepting orders for sales of Retail Marijuana to a customer through either a walk-up window or drive-up window, an Accelerator Store shall apply for, and obtain approval of, an application for a modification of its Licensed Premises for the addition of a walk-up window or drive-up window.

2. The area immediately outside the walk-up window or drive-up window must be under the Licensee's possession and control and cannot include any public property such as public streets, public sidewalks, or public parking lots.

3. Order and Identification Requirements.

   a. Prior to accepting an order or Transferring Retail Marijuana to a customer, the Employee Licensee or Owner Licensee must physically view and inspect the consumer's identification and ensure that the consumer is 21 years of age or older.

   b. The Accelerator Store may accept telephone orders or may accept orders from the customer at the walk-up window or drive-up window. ~~Accelerator Stores may not accept orders or payment for Retail Marijuana over the internet.~~

   c. All orders received through a walk-up window or a drive-up window must be placed by the customer from a menu. The Accelerator Store may not display Retail Marijuana at the walk-up or drive-up window.

4. Payment Requirements. Cash, credit, debit, cashless ATM, or other payment methods, including online payments, are permitted ~~for payments~~ for Retail Marijuana at the walk-up window or drive-up window.

5. Video Surveillance Requirements. For every Transfer of Regulated Marijuana through either a walk-up window or drive-up window, the Accelerator Store's video surveillance must enable the recording of the consumer's identity (and consumer's vehicle in the event of drive-up window), and must enable the recording of the Licensee verifying the consumer's identification and completion of the transaction through the Transfer of Regulated Marijuana.

6. Packaging and Labeling Requirements. An Accelerator Store utilizing a walk-up window or drive-up window must ensure that all Retail Marijuana is packaged and labeled in accordance with Rule 3-1010 and Rule 3-1015 prior to Transfer to the consumer.

7. Local Restrictions. Transfers of Regulated Marijuana using a walk-up window or drive-up window are subject to requirements and restrictions imposed by the relevant Local Jurisdiction.

J. Sales over the Internet. An Accelerator Store may accept orders and payment for Retail Marijuana over the internet.

1. Online Order Requirements.

a. Online orders must include the customer's name and date of birth.

b. Prior to accepting the order, the store must provide and the customer must acknowledge receipt of:

i. A digital copy of the pregnancy warning required in Rule 6-1115; and

ii. If accepting an order for Retail Marijuana Concentrate, the Accelerator Store must also provide the educational resource required in Rule 6-1110(C.5).

c. Licensees must maintain standard operating procedures documenting their compliance with the requirements of this subparagraph (J).

2. Transfer of Retail Marijuana to a customer.

a. A customer must be physically present on the Licensed Premises to take possession of Retail Marijuana.

b. The Accelerator Store must verify the customer's physical identification matches the name and date of birth the customer provided at the time of the order, and verify that the customer is twenty-one years of age or older, in accordance with these Rules.

3. Delivery. An Accelerator Marijuana Store that holds a valid delivery permit may make sales of Retail Marijuana over the internet in accordance with Rule 3-615.

4. Approved Sources of Payment. An Accelerator Store may accept payment using any legal method of payment, gift card pre-payments, or pre-payment accounts established with an Accelerator Store except that any payment with an Electronic Benefits Transfer Services Card is not permitted.

a. A Local Licensing Authority or Local Jurisdiction may further restrict legal methods of payment not expressly permitted by section 44-10-203(2)(dd)(XV), C.R.S.

Basis and Purpose – 6-1110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(4)(b), 44-10-203(1)(k), 44-10-203(2)(aa), 44-10-401(2)(b)(I), 44-10-601, 44-10-611, 44-10-701(1)(a), and 44-10-701(3)(d) and (f), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(3)(a), 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule

is to clarify those acts that are limited in some fashion, or prohibited, by an Accelerator Store. Such limitations include, but are not limited to, quantity limitations on sales and equivalencies for Retail Marijuana Concentrate and Retail Marijuana Product to Retail Marijuana flower. The establishment of equivalencies also provides information to stakeholders including Licensees, the general public, and law enforcement to aid in the enforcement of and compliance with the lawful personal possession limit of one ounce or less of marijuana. Setting these equivalencies provides Accelerator Stores and their employees with necessary information to avoid being complicit in a patron acquiring more marijuana than is lawful to possess under the Colorado Constitution pursuant to Article XVIII, Subsection 16(3)(a).

6-1110 – Accelerator Store: General Limitations or Prohibited Acts

A. Sales to Persons Under 21 Years. Licensees are prohibited from Transferring, giving, or distributing Retail Marijuana to persons under 21 years of age. Licensees are prohibited from permitting a person under the age of 21 years of age from entering the Restricted Access Area.

B. Age Verification. Prior to initiating the Transfer of Retail Marijuana, a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older.

C. Quantity Limitations On Sales.

1. An Accelerator Store and its employees are prohibited from Transferring more than one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product or more than six Retail Marijuana seeds in a single transaction to a consumer. A single transaction includes multiple Transfers to the same consumer during the same business day where the Accelerator Store employee knows or reasonably should know that such Transfer would result in that consumer possessing more than one ounce of marijuana. In determining the imposition of any penalty for violation of this Rule 6-1110(C), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule 8-235(C).

2. Equivalency. Non-edible, non-psychoactive Retail Marijuana Products including ointments, lotions, balms, and other non-transdermal topical products are exempt from the one-ounce quantity limit on Transfers. For all other Retail Marijuana Products or Retail Marijuana Concentrate, the following equivalency applies for the one ounce quantity Transfer limit:

a. One ounce of Retail Marijuana flower shall be equivalent to eight grams of Retail Marijuana Concentrate.

b. One ounce of Retail Marijuana flower shall be equivalent to 80 ten-milligram servings of THC in Retail Marijuana Product.

C.5. Educational Resource. When completing a sale of Retail Marijuana Concentrate, an Accelerator Store shall provide the consumer with the tangible educational resource created by the State Licensing Authority regarding the use of Regulated Marijuana Concentrate.

D. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Retail Marijuana to a consumer.

E. ~~Sales over the Internet. Only an Accelerator Store holding a valid delivery permit taking orders for delivery may make sales over the internet. Only a Retail Marijuana Store holding a valid delivery permit and/or a Retail Marijuana Transporter holding a valid delivery permit may deliver Retail Marijuana to a private residence. All other Retail Marijuana Store and Retail Marijuana Transporter Licensees are prohibited from selling Retail Marijuana over the internet~~Repealed.

F. Delivery Outside Colorado Prohibited. An Accelerator Store holding a valid delivery permit shall not deliver Retail Marijuana to an address that is outside the state of Colorado.

G. Prohibited Items. An Accelerator Store is prohibited from selling or giving away any consumable product that is not a Retail Marijuana Product or an Industrial Hemp Product including, but not limited to, cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not Retail Marijuana Product.

H. Free Product Prohibited. An Accelerator Store may not give away Retail Marijuana to a consumer for any reason.

I. Nicotine or Alcohol Prohibited. An Accelerator Store is prohibited from Transferring Retail Marijuana that contain nicotine or alcohol, if the sale of the alcohol would require a license pursuant to Articles 3, 4, or 5 of Title 44, C.R.S.

J. Storage and Display Limitations.

1. An Accelerator Store shall not display Retail Marijuana outside of a designated Restricted Access Area or in a manner in which Retail Marijuana can be seen from outside the Licensed Premises. Storage of Retail Marijuana shall otherwise be maintained in Limited Access Areas or Restricted Access Area.

2. Any Retail Marijuana Concentrate displayed in an Accelerator Store must include the potency of the concentrate on a sign next to the name of the product.

    a. The font on the sign must be large enough for a consumer to reasonably see from the location where a consumer would usually view the concentrate.

    b. The potency displayed on the sign must be within plus or minus fifteen percent of the concentrate's actual potency.

K. Transfer of Expired Product Prohibited. An Accelerator Store shall not Transfer any expired Retail Marijuana Product to a consumer.

L. Transfer Restriction.

1. Sampling Units. An Accelerator Store may not possess or Transfer Sampling Units.

2. Research Transfers Prohibited. An Accelerator Store shall not Transfer any Retail Marijuana to a Pesticide Manufacturer or a Marijuana Research and Development Facility.

L.5. Standard Operating Procedures. An Accelerator Store must establish written standard operating procedures for the management and storage of Retail Marijuana inventory and the sale of Retail Marijuana to consumers. A written copy of the standard operating procedures must be maintained on the Licensed Premises.

1. An Accelerator Store must provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.

M. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit.

1. The sale of Edible Retail Marijuana Products in the following shapes is prohibited:

    a. The distinct shape of a human, animal, or fruit; or

    b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Retail Marijuana Business. Nothing in this subparagraph (M)(2) alters or eliminates a Licensee's obligation to comply with the requirements of the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

3. Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

N. Adverse Health Event Reporting. An Accelerator Store must report Adverse Health Events pursuant to Rule 3-920.

O. Corrective and Preventive Action. An Accelerator Store shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

P. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

COLORADO
Department of Revenue
Marijuana Enforcement Division

COLORADO DEPARTMENT OF REVENUE
MARIJUANA ENFORCEMENT DIVISION

Emergency Rule Adoption

Amended Rules, 1 CCR 212-3

2-220 – Initial Application Requirements for Regulated Marijuana Businesses

2-225 – Renewal Application Requirements for All Licensees

6-105 – Retail Marijuana Store: License Privileges

6-110 – Retail Marijuana Sales: General Limitations or Prohibited Acts

6-1105 – Accelerator Store: License Privileges

6-1110 – Accelerator Store: General Limitations or Prohibited Acts

Statement of Emergency Justification and Adoption

Pursuant to sections 24-4-103 and 44-10-203, C.R.S., I, Heidi Humphreys, Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt amended Rules 2-220, 2-225, 6-105, 6-110, 6-1105, 6-1110, 1 CCR 212-3 (Emergency Rules) attached hereto.

Section 24-4-103(6), C.R.S., authorizes the State Licensing Authority to issue an emergency rule if the State Licensing Authority finds that the immediate adoption of the rule is imperatively necessary to comply with state law, federal law, or for the preservation of public health, safety, or welfare, and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest. I find: (1) the immediate adoption of these amended rules is necessary to comply with the constitutional and statutory mandates of the Colorado Marijuana Code, sections 44-10-101 *et seq.*, C.R.S.; and (2) compliance with the notice and public hearing requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

Statutory Authority

The State Licensing Authority promulgates these Emergency Rules pursuant to the authority granted in the Colorado Constitution, Article XVIII, Sec. 16, the Colorado Marijuana Code, sections 44-10-101 *et seq.*, C.R.S., and the state Administrative Procedure Act, section 24-4-103, C.R.S. The statutory authority for the Emergency Rules is identified in the statement of basis and purpose preceding the rules and includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(1)(j), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(w), 44-10-203(2)(d)(i)-(vi),44-10-203(2)(ee), 44-10-203(7), 44-10-301, 44-10-305, 44-10-307, 44-10-308, 44-10-309, 44-10-310, 44-10-311, 44-10-312, 44-10-313, 44-10-314, 44-10-316, 44-10-401(2)(a)(I), 44-10-601, and 44-10-605, C.R.S.

Purpose for Emergency Rule

The purpose of this Emergency Rule is to re-adopt existing emergency rules without substantive amendments. The Emergency Rules: amend: 1) Rules 2-220 and 2-225, which currently prohibit the State Licensing Authority from renewing a license if the licensee has failed to obtain Local Licensing Authority or Local Jurisdiction approval within one year of the initial issuance of the state-regulated marijuana business license to implement SB 23-199; and 2) Rules 6-105, 6-110, 6-1105, & 6-1110 to implement HB 23-1279 which allows for online payment processing of Retail Marijuana.

On June 5, 2023, Governor Polis signed SB 23-199 Marijuana License Applications and Renewals, which allows the State Licensing Authority to renew a license if the licensee has failed to obtain Local Licensing Authority or Local Jurisdiction approval within one year of the initial issuance of the state-regulated marijuana business license. The bill included a petition clause, which stated that the act takes effect at 12:01 am on the day following the expiration of the ninety-day period after final adjournment of the general assembly. To date, no petition has been filed, and therefore, these Emergency Rules are imperatively necessary to align the rule with the revised statutory provisions in section 44-10-305, C.R.S.

On June 1, 2023, Governor Polis signed HB 23-1279 Allow Retail Marijuana Online Sales, which allows for online payment processing at a retail marijuana store license. The bill included a petition clause, which stated that the act takes effect at 12:01 am on the day following the expiration of the ninety-day period after final adjournment of the general assembly. No petition was filed, and therefore, Emergency Rules were necessary to align the rule with the revised statutory provisions, and were filed on August 8, 2023. While the permanent rulemaking process has been initiated it is necessary to re-adopt these emergency rules to maintain alignment with the revised statutory provisions in 44-10-305 C.R.S.

On August 8, 2023, the Division adopted Emergency Rules under SOS 2023-00483, which will expire pursuant to the State Administrative Procedure Act on December 6, 2023. In anticipation of adopting the emergency reinstatement rule permanently through the Division's permanent rulemaking process, these Emergency Rules re-adopt those provisions to provide consistency for licensees between October and the effective date of permanent rules.

Effective Date of Emergency Rule and Permanent Rulemaking

The attached Emergency Rules are effective **October 27th, 2023**.

Pursuant to section 24-4-103(6), C.R.S., of the Colorado Administrative Procedure Act, the Emergency Rules will remain in effect for 120 days from the date of adoption or until repealed by the State Licensing Authority upon filing of a notice of such with the Secretary of State.

On July 14, 2023, the State Licensing Authority initiated the rulemaking stakeholder process to inform permanent rules with the intended effective date of January 1, 2024. The State Licensing Authority initiated the permanent rulemaking process pursuant to the Colorado Administrative Procedure Act, section 24-4-103, C.R.S., on September 1, 2023 by filing the Notice of Permanent Rulemaking.

The State Licensing Authority issued a Statement of Adoption on October 27th, 2023 to implement these changes. The re-adoption of this Emergency Rule is necessary to implement the statutory changes resulting from SB 23-199 and HB 23-1279.

Additional information regarding the Division's permanent rulemaking session can be accessed on the Division's website.

Heidi Humphreys
CEO and Executive Director
Colorado Department of Revenue
State Licensing Authority

October 27, 2023
Date

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Tracking number: 2023-00724

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

Marijuana Enforcement Division

on 10/27/2023

1 CCR 212-3

COLORADO MARIJUANA RULES

The above-referenced rules were submitted to this office on 10/27/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 06, 2023 12:06:46

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Emergency Rules Adopted

Department

Department of Local Affairs

Agency

Division of Housing

CCR number

8 CCR 1302-14

Rule title

8 CCR 1302-14 NON-RESIDENTIAL AND RESIDENTIAL FACTORY-BUILT STRUCTURES AND TINY HOMES; SELLERS OF MANUFACTURED HOMES AND TINY HOMES; MANUFACTURED HOME, TINY HOME, AND MULTI-FAMILY STRUCTURE INSTALLATIONS 1 - eff 10/24/2023

Effective date

10/24/2023

Expiration date

02/21/2024

DEPARTMENT OF LOCAL AFFAIRS

Division of Housing

NON-RESIDENTIAL AND RESIDENTIAL FACTORY-BUILT STRUCTURES AND TINY HOMES; SELLERS OF MANUFACTURED HOMES AND TINY HOMES; MANUFACTURED HOME, TINY HOME, AND MULTI-FAMILY STRUCTURE INSTALLATIONS; FOUNDATION SYSTEMS FOR MANUFACTURED HOMES, TINY HOMES, AND FACTORY-BUILT STRUCTURES WHERE NO STANDARDS EXIST; AND HOTELS, MOTELS, AND MULTI-FAMILY STRUCTURES IN THOSE AREAS OF THE STATE WHERE NO STANDARDS EXIST

8 CCR 1302-14

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

Rule 1. Definitions.

In addition to the definitions provided in section 24-32-3302, C.R.S., the following definitions apply to these rules:

1.1 "Authorized quality assurance representative" as defined in section 24-32-3302(1), C.R.S., means a "third party agency" (defined in Rule 1.30 below) approved by the Division of Housing.

1.2 "Alternative Construction" or "AC" has been replaced with "On-site Construction (OC)" in Rule 1.19 .This definition has been left in since there are number of forms and documents circulating with this legacy term.

1.3 "Authority Having Jurisdiction" or "AHJ" means the local government's building department with oversight over where the structure is to be located.

1.4 "Built-for-Purpose Trailer" means a vehicle trailer that is built to serve as a construction platform for a tiny home and has: a Vehicle Identification Number (VIN), a Gross Vehicle Weight Rating (GVWR), and is capable of sustaining and moving a tiny home.

1.5 "Certificate of Occupancy" means a certificate issued by the Division of Housing stating at the time of issuance the structure was built in compliance with all applicable codes and construction standards adopted by the State Housing Board. It only applies to motels, hotels, and multi-family structures in those areas of the state where no such standards exist.

1.6 "Certified Inspector" means one of the following individuals authorized by the Division of Housing:

1.6.1 An "independent contractor" as defined pursuant to section 24-32-3302(15), C.R.S., that is authorized by the Division of Housing to perform or enforce installation inspections,

1.6.2 An employee of a "state" or "firm" as used in the definition of a "quality assurance representative" pursuant to section 24-32-3302(30), C.R.S., and further defined in Rule 1.30 .2 of these rules, or

1.6.3 A Colorado licensed engineer that is authorized by the Division of Housing to perform an On-site Construction inspection and oversight manufacturer inspection.

1.7 "Closed Panel System" means a building component or assembly built off-site that may include electrical, plumbing, mechanical, or insulation with finishes applied to both sides and then transported to be erected on-site to complete a residential or nonresidential building.

1.8 "Conflict of Interest" means when there is personal or private interest(s) sufficient to influence or appear to influence the proper exercise of duties or responsibilities.

1.9 "Direct On-site Supervision" as used in section 24-32-3315(1)(b)(I), C.R.S., means the registered or certified installer must be present at the installation "site" as defined by section 24-32-3302(33), C.R.S., and readily available to properly supervise installation work as defined by section 24-32-3302(16), C.R.S., that is performed by an employee not registered or certified as an installer.

1.10 "Down payment(s)" as used in section 24-32-3325(2)(b), C.R.S, and rules 5.2, 5.3, 5.8, and 5.9, means all money given by a purchaser to a seller for the purchase of a manufactured home or tiny home before the manufactured home or tiny home is delivered.

1.11 "Factory-built" means the construction of nonresidential structures or residential structures (modular homes, tiny homes, or multi-family structures) that occurs at an offsite location (e.g. manufacturing plant, small business space or school workshop, or private barn), separate from the site where the structure is to be installed.

1.12 "Firm" as used in the definition of an "independent contractor" pursuant to section 24-32-3302(15), C.R.S., and in the definition of a "quality assurance representative" pursuant to section 24-32-3302(30), C.R.S., means a "third party agency" (defined in Rule 1.30 below).

1.13 "HUD-code Home" means a manufactured home constructed in compliance with the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., and any standard promulgated by the Secretary of the U.S. Department of Housing and Urban Development (HUD) pursuant to that federal act.

1.14 "Individual" as used in the definition of an "independent contractor" pursuant to section 24-32-3302(15), C.R.S., means a Colorado licensed professional engineer (PE) or architect authorized by the Division of Housing to perform or enforce installation inspections.

1.15 "Insignia" means a seal, label, or tag issued by the Division of Housing that when permanently affixed to a structure confirms compliance as one of the following:

1.15.1 An "insignia of approval" pursuant to sections 24-32-3303(1)(c), 24-32-3310, 24-32-3311(a), 24-32-3311(a.5), 24-32-3311(1)(b), 24-32-3311(4), 24-32-3311(5), C.R.S., issued by the Division of Housing or an "authorized quality assurance representative" pursuant to sections 24-32-3302(1), 24-32-3303(1)(c), 24-32-3304(1)(e), 24-32-3311(1)(a), 24-32-3311(1)(b), 24-32-3311(4), and 24-32-3311(5), C.R.S., verifies that a factory built structure is deemed to be designed and constructed in compliance with the requirements of all codes and standards enacted or adopted by the state and accounts for any local government installation requirements.

1.15.2 A "certificate of installation" as defined pursuant to section 24-32-3302(3), C.R.S., and issued by the Division of Housing or a party authorized by the Division of Housing, verifies compliance with the installation standards established by the State Housing Board in Rule 2.12 through 2.14 of these rules.

1.16 "Installation Authorization" pursuant to sections 24-32-3317(1), 24-32-3317(2), and 24-32-3317(4), C.R.S., means a Division of Housing approved form posted on the site of an installation, located beyond the authority of a "participating jurisdiction" as defined in Rule 1.18, verifying that

the home owner or registered installer has made application with the Division of Housing to install a manufactured home or a tiny home and has received authorization to install it, or that the home will be installed by a certified installer who has automatic authorization to do so under their certified status.

1.17 "Multi-family structure(s)" means a structure containing at least three independent dwelling units within an International Building Code (IBC) Group R-2, R-3, or R-4 building or within an International Residential Code (IRC) Townhouse building. Such buildings are limited to apartments, condominiums, live work units, vacation time shares, and other similar uses with independent dwelling units where the building is used, intended, or designed to be built, used, rented, leased, let, or hired out to be occupied or that are occupied for living purposes.

1.18 "Occupancy" or "Occupied" means a factory-built structure, manufactured home, or tiny home designed, built, modified, or used with the intent for individuals to enter.

1.19 "On-site Construction" or "OC" means on-site construction or modification of the factory-built structure that directly relates to the durability, quality, and safety; that is completed at the installation "site" as defined by section 24-32-3302(33), C.R.S.; using components not installed at the manufacturer's location; and to complete the compliance of that structure as reflected in the Division of Housing approved plans. These items do not include the component(s) required for setting and securing the structure for its installation.

1.20 "Open Construction" means any building component, assembly, or system manufactured in such a manner that all concealed parts or processes of manufacture can be readily inspected at the building site without disassembly, damage, or destruction, i.e., panelized construction assembled on site. Note: Assembled rooms or spaces, panels with finishes applied to both sides and electrical wiring in conduit are not open construction, but rather a "closed panel system" as defined pursuant to Rule 1.7.

1.21 "Participating Jurisdiction" means a "local government" as defined pursuant to section 24-32-3302(18), C.R.S., which has agreed to administer and inspect manufactured housing installations within the legal boundaries of the jurisdiction and in compliance with the manufactured home, multi-family, and tiny home installation standards established by the State Housing Board in rules 2.12 through 2.14 of these rules.

1.22 "Permanent Foundation" as defined in section 24-32-3302(26.5) C.R.S, is further defined to account for point loads of the structure to the ground, prevent lateral movement and overturning of the structure, and provide frost protection. Local government building departments are responsible for design review and approval of permanent foundations. For areas of the state without a local government building department, the Division of Housing will review and approve permanent foundations designed by a Colorado licensed design professional.

1.23 "Plan" means a specific design for the construction of a structure submitted by the manufacturer to the Division of Housing for review and approval that typically includes a floor plan, elevation drawings, structural pages, electrical circuit layouts, recommended foundation drawings, mechanical drawings, plumbing isometrics, cross section drawings, an energy code compliance report, heat load calculations, and the engineering calculations.

1.24 "Quality Control Procedures" means procedures prepared by a manufacturer for each of its manufacturing facilities and approved by the Division of Housing or "third party agency" (defined in Rule 1.30. below) describing the method that the manufacturer uses to assure structures produced by that manufacturer are in conformance with the applicable standards, codes, and approved plans.

1.25 "Red Tag Notice" means a physical identification posted visibly on a particular structure indicating that it is in violation of applicable state statutes, federal law, or these rules. A structure posted with this notice cannot be sold, offered for sale, nor have occupancy in Colorado.

1.26 "Remote Inspection" means a production inspection performed where the inspector is in a location other than the location where the structure is being manufactured using a computer having an internet or cellular connection to communicate with a manufacturer's representative responsible for quality control. The manufacturer's representative responsible for quality control shall utilize a smart device (cell phone, tablet, etc.). The inspection must be performed in "real time" with continuous live stream video from the manufacturing location, and two-way audio. Each inspection must be securely stored on the internet and retrievable by VIN, serial number, insignia number or other approved identifier. Remote inspections may only be conducted by an approved Third Party Agency".

1.27 "State Administrative Agency" or "SAA" means the Building Codes & Standards Section of the Department of Local Affairs' Division of Housing which has been approved or conditionally approved by the federal government to carry out its state plan for enforcement of its standards pursuant to Rule 2.8 of these rules.

1.28 "Temperature Sensitive Equipment" means equipment or instrumentation whose performance or lifespan can change due to changes in the ambient temperature surrounding that equipment or instrumentation.

1.29 "Temporary Foundation" As defined in section 24-32-3302(34) C.R.S., is further defined to clarify that local government building departments are responsible for design review and approval of temporary foundations. For areas of the state without a local government building department, the Division of Housing will review and approve temporary foundation designed by a Colorado licensed design professional.

1.30 "Third Party Agency" means one of the following entities authorized by the Division of Housing:

1.30.1 "Firm" as used in the definition of an "independent contractor" pursuant to section 24-32-3302(15), C.R.S., to perform or enforce installation inspections, or

1.30.2 "State" or "firm" as used in the definition of a "quality assurance representative" pursuant to section 24-32-3302(30), C.R.S., to:

(A) Inspect a manufacturer's registered or certified facility by conducting a "production review" pursuant to section 24-32-3302(28), C.R.S., in order to determine its ability to follow a building "plan" approved by the Division of Housing and the construction standards and codes adopted by the State Housing Board, evaluating a manufacturer's "quality control procedures", and performing design evaluations;

(B) Inspect a factory-built structure or tiny home at seller lots or on site as part of an oversight inspection of a registered factory, random audit inspection of a certified factory, or an on-site construction (OC) inspection to ensure compliance with construction standards and codes adopted by the State Housing Board; and

(C) Certify a manufacturer's factory-built structure or tiny home by affixing an insignia of approval issued by the Division of Housing deeming it to be designed and constructed in compliance with the requirements of all codes and standards enacted or adopted by the State and accounting for any local government installation requirements adopted in compliance with sections 24-32-3310 and 24-32-3318.

1.31 "Tiny House" is distinct from a "tiny home" as defined pursuant to section 24-32-3302(35), C.R.S. in that a "tiny house" as defined in Appendix Q of the 2018 International Residential Code shall be installed on a permanent foundation.

1.32 "Vehicle Chassis" means the base frame of a single-family dwelling, designed and constructed for long-term occupancy that supports the home's construction and transportation, and includes axles, wheels, GVWR and a VIN.

1.33 "Wildfire Risk" means local building codes applied to meet the intent of the International Wildland-Urban Interface Code per Chapter 5 – Special Building Construction Regulations.

Rule 2. Codes and Standards

Pursuant to sections 24-32-3303(1), 24-32-3304(1)(a) and (b), and section 24-32-3305(2), C.R.S., the State Housing Board hereby adopts and incorporates by reference the following nationally recognized codes, standards, guidelines, procedures, or rules in their entirety, except for the revisions, additions, deletions, or exceptions/exemptions specified below. The incorporated codes, standards, guidelines, procedures, or rules do not include later revisions. They are readily available for public inspection in written format during the regular business hours at the Division of Housing, Building Codes and Standards Section, 1313 Sherman Street, Suite 320, Denver, CO 80203. Paper copies are available for a reasonable fee paid to the Division of Housing. Electronic copies are available from the agencies originally issuing them as noted below.

Building Codes for Factory-Built Residential Structures and Tiny Homes; Factory-Built Nonresidential Structures; and Site-Built Hotels, Motels, and Multi-Family Structures in those areas of the State where no Standards Exist

Manufacturers are permitted to use the construction codes in effect prior to the adoption of any new code for a maximum of 180 days after the amendment in rule takes effect. The Program Manager for the Building Codes & Standards Section, the Director of the Office of Regulatory Oversight, the Deputy Division Director, or the Division Director is authorized to grant, in writing, one extension, for a period not more than 180 days.

2.1 The International Building Code (IBC), 2018 Edition, published by the International Code Council, Inc. (ICC). This is a safety code and is available through the ICC at: https://www.iccsafe.org.

2.1.1 **Section 105.2 Work exempt from permit**

Add the following exceptions prior to "Building:"

2.1.1.1 **Equipment Enclosures:**

One story detached buildings designed to protect equipment from heat, weather elements, or damage that:

- Do not exceed 500 sq. ft.,
- Are not connected to a permanent source of power,
- Are not classified as an electrical hazardous area per Article 500 of the NEC (is a nonhazardous area), and
- Are not installed on a permanent foundation.

A building that in its entirety operates as a listed product is automatically exempt as long as the manufacturer is able to demonstrate it is labeled as such.

2.1.1.2 **Building Components:**

A building component, assembly, or system constructed in the factory as open construction (see definitions).

The above exemptions from approval through the State factory-built program do not grant any exemption from local jurisdiction requirements or state electrical or plumbing requirements. The above exemptions do not grant authorization for any work to be done in a manner that is in violation of the provisions of the adopted codes.

2.1.2 **Section 901.2 Fire Protection systems**

Add the following new section:

2.1.2.1 **Section 901.2.1 Certified inspector required**

An automatic fire sprinkler system shall be installed in buildings as required by the local jurisdiction where the structure will be set. Final tests required by this Section shall be approved by a certified inspector as required by a local jurisdiction. The inspector must be either an employee of the fire department having jurisdiction or another qualified individual with prior approval of the Colorado Division of Fire Prevention & Control.

2.1.3 **Section 907.2.10.2 (1) Smoke Alarms – Location**

Revise “immediate vicinity” to read “within 15 feet”.

2.1.4 **Section 907.2.10.6 Smoke Alarms – Power Source**

Add to the end of the paragraph the following:

Smoke and/or carbon monoxide alarms shall not be installed on a circuit dedicated only for smoke and/or carbon monoxide alarms.

2.1.5 **Section 915.2.1 Carbon monoxide alarms – Locations**

Revise “immediate vicinity” to read “within 15 feet”.

2.1.6 **Section 915.4.1 Carbon monoxide alarms – Power Source**

Add to the end of the paragraph the following:

Smoke and/or carbon monoxide alarms shall not be installed on a circuit dedicated only for smoke and/or carbon monoxide alarms.

2.1.7 **Section 1015.8 Window openings**

Replace the words “top of the sill” with “bottom of the clear opening”.

2.1.8 **Chapter 13**

Delete in its entirety.

2.1.9 **Section 1507.1.1 Ice barriers**

Add the following sentence at the beginning:

Due to a history of ice forming along the eaves in Colorado, an ice barrier is required.

And add the following language at the end of the first sentence:

...or not fewer than two layers of underlayment cemented together and to the roof.

2.1.10 **Section 1608.2 Ground snow loads**

Revise to read as follows:

Roof Snow Load (Pf) shall be in accordance with the local jurisdiction requirements and shall not be less than a minimum roof snow load of 30 PSF. The allowable increase of snow duration shall not be used when the snow load is above 65 PSF.

2.1.11 **Section 1609.3.1 Wind speed conversion**

Add this new section with the following language:

The 3 second gust basic wind speed shall be in accordance with the local jurisdiction requirements. For jurisdictions that have adopted a building code edition prior to the 2012, the basic wind speed of that jurisdiction shall be multiplied by 1.20 for Risk category I structures, 1.29 for Risk category II structures, and 1.38 for Risk category III and IV structures to obtain V*ult*. The design wind speed V*ult* shall not be less than the minimum basic wind speeds as follows (Risk category as determined by Table 1604.5):

Risk category I structures – 105 MPH

Risk category II structures – 115 MPH

Risk category III and IV structures – 120 MPH

The Exposure category shall be C, unless otherwise justified.

2.1.12 **Section 2111.1 and 2111.14.1 Fireplaces**

Add this new section with the following language:

Every new fireplace must comply with one of the following:

1. Listed and labeled fireplace and chimney systems composed of factory-made components, and assembled in the field in accordance with the manufacturer's instructions and the conditions of the listing, and

2. Approved gas logs.

2.2 The International Residential Code (IRC), 2018 Edition, published by the International Code Council, Inc. (ICC). This is a safety code and is available through the ICC at: https://www.iccsafe.org.

2.2.1 **Table R301.2 (1)** -

Revise as follows:

Climatic or Geographic Design Criteria for IRC Dwellings (Risk Category II Structures)	Division of Housing Minimum
Roof Snow load[(1)]	30 psf, non-reducible
Basic Wind Speed[(1)]	115 mph (V_{ult}), Exposure C
Wind Topographic Effects	Per Local
Seismic Design Category[(1)]	Minimum B
Weathering	Severe
Frost Line Depth[(4)]	Per Local
Termite Damage	Slight
Winter Design Temperature[(2)]	Per Local
Ice Barrier Underlayment Requirement	Yes
Flood Hazards	Per Local
Air Freezing Index[(3)]	Per Local
Mean Annual Temperature[(3)]	Per Local
Wildfire Risk	Per Local

[(1)]The roof snow load, wind design, and seismic zone shall be in accordance with the local jurisdiction requirements and shall not be less than the minimums stated. The allowable increase for snow duration shall not be used when the snow load is above 65 PSF.

[(2)]See Appendix B and verify with local jurisdiction.

[(3)]See the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32° Fahrenheit)" at www.ncdc.noaa.gov.

[(4)] In areas of the state without a local jurisdiction, the Division of Housing will approve all temporary or permanent foundation systems as defined in Rule 2.

2.2.2 **Table R301.5 – Live Loads**

Add footnote (j) to Decks, Porches, Exterior balconies, Fire escapes to read as follows:

[(j)]When the snow load is above 65 psf, the minimum uniformly distributed live loads for exterior balconies, decks and fire escapes shall be as required for roof snow loads.

2.2.3 **Table R302.1 (1) – Exterior Walls**

Delete footnote (b).

2.2.4 **Table R302.1 (2) – Exterior Walls—Dwellings with Fire Sprinklers**

Delete footnote (c).

2.2.5 **Section R308.4.6 Glazing adjacent to stairs and ramps**

Revise to include the following sentence as an exception:

1. Where the glazing is protected by a guard complying with Section R312 and the plane of the glass is more than 18 inches (457 mm) from the guard.

2.2.6 **Section R308.4.7 Glazing adjacent to the bottom of the stair landing**

Revise to increase to less than 60 inches (1524 mm) above the landing.

2.2.7 **Section R310.1 Emergency escape and rescue opening required**

Add a second sentence that reads as follows:

Cape Code style attics that qualify as a story shall require one operable emergency and escape opening.

2.2.8 **Section R310.2.2 Window sill height**

Replace the word “sill” with the word “opening” in the section title and replace the word “sill” with “window opening”.

2.2.9 **Section 311.7.12 Ships ladders**

Add the following sentence to the end of the Exception:

The device must remain fixed in position when used in these areas.

2.2.10 **Section R312.2.1 Window sill heights**

Replace the word “sill” with the word “opening” in the section title and delete the words “the sill of”.

2.2.11 **Section R313 Automatic Fire Sprinkler Systems**

Delete this section and replace it with the following:

An automatic fire sprinkler system shall be installed in one and two family dwellings and townhouses as required by the local jurisdiction where the home will be set. In-plant and final tests required by this Section shall be approved by a certified inspector. The inspector shall be an employee of the fire department having jurisdiction or another qualified individual with prior approval of the Colorado Division of Fire Prevention & Control.

2.2.12 **Section 314.3 (2) Smoke Alarms – Location**

Revise “immediate vicinity” to read “within 15 feet”.

2.2.13 Section 314.4 Revise "Physical interconnection of smoke alarms shall not be required where listed wireless alarms are installed and…" to "Physical interconnection of smoke alarms shall not be required where listed wireless alarms are installed in existing construction when approved by the Division of Housing and…"

2.2.14 **Section 314.6 Smoke Alarms – Power Source**

Add to the end of the paragraph the following:

Smoke and/or carbon monoxide alarms shall not be installed on a circuit dedicated only for smoke and/or carbon monoxide alarms.

2.2.15 **Section 315.3 Carbon monoxide alarms – Locations**

Revise "immediate vicinity" to read "within 15 feet".

2.2.16 **Section 315.6 Carbon monoxide alarms – Power Source**

Add to the end of the paragraph the following:

Smoke and/or carbon monoxide alarms shall not be installed on a circuit dedicated only for smoke and/or carbon monoxide alarms.

2.2.17 **Section R802.10 Wood trusses**

Add the following new section:

Section R802.10.5 Marking

Each truss shall be legibly branded, marked, or shall have other permanent labeling of the truss drawing's designated identification number on the large face of the top chord and within two (2) feet of the peak of the truss.

2.2.18 **Section R905.1.2 Ice barriers**

Revise to read as follows:

Due to a history of ice forming along eaves in Colorado, an ice barrier is required. The ice barrier shall consist of a self-adhering polymer-modified bitumen sheet and shall extend from the eave's edge to a point at least 24" inside the exterior wall line of the building or of not fewer than two layers of underlayment cemented together and to the roof.

2.2.19 **Section R1004.4, G2406.2 exceptions 3 and 4, G2425.8 #7, G2445**

Delete all and replace with the following:

Unvented fuel fired room heaters and unvented fuel fired fireplaces are prohibited.

2.2.20 Add the following new sections:

Section R1001.1and R1004.1 – Fireplaces

Every new fireplace must comply with one of the following:

1. Listed and labeled fireplace and chimney systems composed of factory-made components, and assembled in the field in accordance with manufacturer's instructions and the conditions of the listing, and

2. Approved gas logs.

2.2.21 **Section P2503.5.1 Rough plumbing**

Delete the words "other than plastic" in the sentence for water and air testing.

2.2.22 **Chapter 11 ENERGY EFFICIENCY**

Delete in its entirety.

2.2.23 **Section M2001.1 Installation and G2452.2 Installation**

Add the following sentence:

All rooms or spaces containing boilers shall be provided with a floor drain and trap primer.

2.2.24 **Section G2417.4.1 Test pressure**

Revise to read as follows:

The test pressure to be used shall not be less than 1 ½ times the proposed maximum working pressure, but not less than 10 psig (69 kPa gauge) for a period of not less than 15 minutes. Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe. The test pressure for valves and connections to appliances shall not exceed 0.5 psig (3kPa).

2.2.25 **Electrical Sections**

Delete Chapters 34 through 43.

2.2.26 **Appendix A – Sizing and Capacities of Gas Piping**

Adopted.

2.2.27 **Appendix P – Sizing of Water Piping System**

Adopted.

2.2.28 **Appendix Q – Tiny Houses**

1. Amend Appendix Q Tiny Houses as follows:

   a. Q101.1 Scope: Change to read: This appendix shall be applicable to tiny houses, and "tiny homes" as defined by section 24-32-3302(35), C.R.S., used as single dwelling units. Tiny houses, and "tiny homes" as defined by section 24-32-3302(35), C.R.S., shall comply with this code except as otherwise stated in this appendix. Insert "…and tiny homes" after each reference to "tiny houses" in all sections of this appendix.

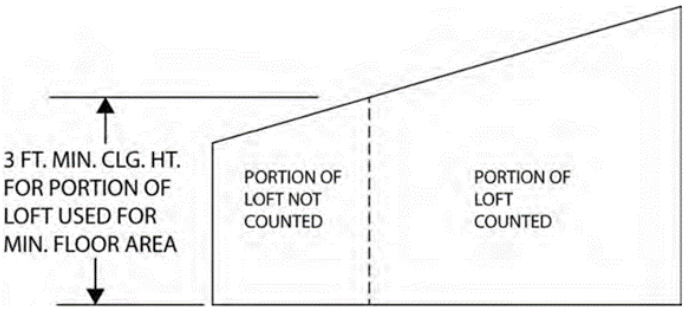
b. Q102.1 General: Add TINY HOME: as defined by section 24-32-3302(35), C.R.S. The square footage of a tiny home excludes loft area.

c. Edit Q104.2 to read: Loft Access and egress. The access to and primary egress from lofts shall be of any type described in Sections Q104.2.1 through Q104.2.5. The loft access and egress element along its required minimum width shall meet the loft where its ceiling height is not less than 3 feet (914 mm). Egress from the sleeping loft must be present and may be reached from the loft or the loft landing.

d. Edit Q104.2.1. to read: Stairways. Stairways accessing lofts shall comply with this code or with Sections Q104.2.1.1 through Q104.2.1.7.

e. Edit Q104.2.2 to read: Headroom. The headroom above stairways accessing a loft shall be not less than 6 feet 2 inches (1880 mm), as measured vertically, from a sloped line connecting the tread, landing or landing platform nosings in the center of their width and vertically from the landing platform along the center of its width.

f. Edit Q10 4.1.3: Add See Figure Q104.1.3:



For SI: 1 foot = 304.8 mm.

FIGURE AQ104.1.3
HEIGHT EFFECT ON LOFT AREA

g. Edit Q104.2.1.4 to read: Landings. Intermediate landings and landings at the bottom of stairways shall comply with Section R311.7.6, except that the depth in the direction of travel shall be not less than 24 inches (610 mm).

h. Add Q104.2.1.5: Landing platforms. The top tread and riser of stairways accessing lofts shall be constructed as a landing platform where the loft ceiling height is less than 6 feet 2 inches (1880 mm) where the stairway meets the loft. The landing platform shall be not less than 20 inches (508 mm) in width and in depth measured horizontally from and perpendicular to the nosing of the landing platform. The landing platform riser height to the loft floor shall be not less than 16 inches (406 mm) and not greater than 26 inches (660 mm).

i. Renumber Q104.2.1.5 Handrails to Q104.2.1.6 Handrails.

j. Renumber Q104.2.1.6 Stairway guards to Q104.2.1.7 Stairway guards.

k. Edit Q104.2.2.1 Size and capacity from "…supporting a 200-pound (75kg) load…" to "…supporting a 300-pound (136kg) load…".

l. Edit Q104.2.5 to read: Loft guards. Loft guards shall be located along the open sides of lofts. Loft guards shall be not less than 36 inches (914 mm) in height or one-half of the clear height to the ceiling, whichever is less. Loft guards shall comply with Section R312.1.3 and Table R301.5 for their components.

m. Add: Q106: SECTION Q106

ENERGY CONSERVATION

Q106.1 Air leakage testing. The air leakage rate for shall not exceed 0.30 cubic feet per minute at 50 Pascals of pressure per square foot of the dwelling unit enclosure area. The air leakage testing shall be in accordance with the testing methods required in IECC 2015 R402.4.1.2. The dwelling unit enclosure area shall be the sum of the areas of ceilings, floors and walls that separate the conditioned space of a dwelling unit from the exterior, its adjacent unconditioned spaces and adjacent dwelling units.

Q106.1.1 Whole-house mechanical ventilation. Where the air leakage rate is in accordance with Section Q106.1, the tiny house shall be provided with whole house mechanical ventilation in accordance with Section M1505.4.

Q106.2 Alternative compliance. Tiny houses and tiny homes shall be deemed to be in compliance with Chapter R4 of the adopted International Energy Conservation Code, provided that the following conditions are met:

1. The insulation and fenestration meet the requirements of IECC 2015 Table R402.1.2 as amended by these rules (allowing ceiling insulation to be R30 vs. R49).

2. The thermal envelope meets the requirements of IECC 2015 Section R402 and IECC 2015 Table R402.4.1.1.

3. Solar, wind or other renewable energy source supplies not less than 90 percent of the energy use for the structure.

4. Solar, wind or other renewable energy source supplies not less than 90 percent of the energy for service water heating.

5. Permanently installed lighting is in accordance with IECC 2015 Section R404.

6. Mechanical ventilation is provided in accordance with IRC 2018 Section M1505 and operable fenestration is not used to meet ventilation requirements.

n. Add: Q107: Bathroom Lavatory, For Tiny Homes, if a bathroom lavatory cannot be added due to size constraints, then the kitchen sink can be substituted to meet the lavatory requirement.

o. Add: Q108: Construction on a Built-for-Purpose Trailer. The tiny home will be built on a built-for-purpose trailer. Trailers that have structure modifications prior to the start of the tiny home build must provide engineered stamped drawings and the documentation to be roadworthy on Colorado roads. (Structural modifications may change the trailer classification to a kit trailer or homemade trailer and a new VIN/GVWR and physical

inspection by CDOT or Colorado State Highway Patrol, or other approved agencies may be required.)

p. Add: Q109: Tiny Home on a Temporary Foundation. A tiny home on wheels which is installed on a temporary foundation may utilize connections to an electrical pedestal or plumbing connections that allow for movement from one location to another.

2.3 The International Mechanical Code (IMC), 2018 Edition, published by the International Code Council, Inc. (ICC). This is a safety code and is available through the ICC at: https://www.iccsafe.org.

2.3.1 **Section 303.3.1 LPG appliance**

Add the following new section:

LPG appliances shall not be installed in a pit, basement, or crawl space where unburned fuel may accumulate unless an approved sensing device is installed in conjunction with an automatic shutoff valve located where the gas enters the structure only for retro-fitting of existing structures or as required by the local jurisdiction.

2.3.2 **Section 903.1 General**

Add the following additional sentence:

Every new installation of a solid fuel-burning, vented decorative appliance or room heater shall meet the most stringent emission standards for wood stoves established under State statute and/or regulations promulgated by the State Air Quality Control Commission as of the time of installation of the appliance or room heater. (Effective January 1, 1991 – CC90-617).

2.3.3 **Section 903.3 Unvented gas log heaters**

Delete this section in its entirety.

2.4 The International Plumbing Code (IPC), 2018 Edition, published by the International Code Council, Inc. (ICC). This is a safety code and is available through the ICC at: https://www.iccsafe.org.

2.4.1 **Appendix Chapter E – Sizing of water piping systems**

2.4.1.1 **Section 312.3**

Delete the words “Plastic Piping shall not be tested by using air”.

2.5 The National Electric Code (NEC), published by the National Fire Protection Association, Inc. (NFPA), and the Edition as adopted by the Colorado State Electrical Board at the time of plan submittal. This is a safety code and is available through the NFPA at: https://www.nfpa.org.

A transition period of 180 days after the effective date applies. The Program Manager for the Building Codes and Standards Section is authorized to grant, in writing, one extension, for a period not more than 180 days.

Any conflicts that may arise between these amendments and a future State adopted edition of the NEC shall be resolved by applying the specific amended provisions of the 2020 edition. The following amendments are made to the NEC for use with all factory-built units:

2.5.1 **Article 545 Manufactured Buildings**

Add the following new section:

2.5.1.1 **Section 545.14 Testing**

(A) Continuity and Operational Tests and Polarity Checks. Each manufactured building shall be subjected to:

(1) An electrical continuity test to ensure that all exposed electrically conductive parts are properly bonded;

(2) An electrical operational test to demonstrate that all equipment, except water heaters and electric furnaces, is connected and in working order; and

(3) Electrical polarity checks of permanently wired equipment and receptacle outlets to determine that connections have been properly made.

These tests shall be performed after branch circuits are complete and after wiring devices are installed and wiring properly terminated.

2.5.2 **Article 334.23 Cables Run Across the Top of Floor Joists/Rafters**

Add the following new sentence at the end:

Substantial guard strips or other protection shall be provided to protect wiring within three (3) feet of the marriage line where the attic is exposed and the roof is completed on-site, such as a hinged roof.

2.5.3 Article 210.8(F) Outdoor Outlets

Add the following to the existing exception:

…than those covered in 210.8(C), and outlets designated for outdoor mechanical cooling equipment.

This exception is limited to outdoor mechanical cooling equipment shipped loose by the manufacturer with the factory-built structure to be completed on-site. This exemption does not apply if the outdoor mechanical cooling equipment is provided by any other party. If it is provided by a party that is not the manufacturer of the factory-built structure, then the State Electrical Board's requirement applies.

2.6 The International Fuel Gas Code (IFGC), 2018 Edition, published by the International Code Council, Inc. (ICC). This is a safety code and is available through the ICC at: https://www.iccsafe.org.

2.6.1 **Section 303.3 Prohibited locations**

Add the following:

LPG appliances shall not be installed in a pit, basement, or crawl space where unburned fuel may accumulate unless an approved sensing device is installed in conjunction with

an automatic shutoff valve located where the gas enters the structure only for retro-fitting of existing structures or as required by the local jurisdiction.

2.6.2 **Section 303.3, 501.8 #8, Section 621**

Delete all and replace with the following:

Unvented fuel fired room heaters and unvented fuel fired fireplaces are prohibited.

2.6.3 Section 406.4.1 Test pressure

Revise to read as follows:

The test pressure to be used shall not be less than 1 ½ times the proposed maximum working pressure, but not less than 10 psig (69 kPa gauge), irrespective of design pressure. Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe. The test pressure for valves and connections to appliances shall not exceed 0.5 psig (3kPa).

2.7 The International Energy Conservation Code (IECC), 2015 Edition, published by the International Code Council, Inc. (ICC). This code is available through the ICC at: https://www.iccsafe.org.

2.7.1 **Section C101.5 and R101.5 Compliance**

Residential buildings shall meet the provisions of the 2015 IECC—Residential provisions.

Commercial buildings shall meet the provisions of the 2015 IECC—Commercial provisions.

Add the following exception:

Where the location the factory-built structure is to be permanently set is known and the local jurisdiction has adopted the 2012 IECC, the building may comply with the 2012 IECC. Where the location of the factory-built structure is to be permanently set is known and the local jurisdiction has adopted an earlier version of the energy code which is less restrictive than the 2012 IECC, including any local jurisdiction amendments, or where no code has been adopted that regulates the design of buildings for effective energy use, the structure may comply as far back as the 2009 IECC.

2.7.2 **Section C202, R202 - Definitions**

Add the following definition:

ZERO-ENERGY BUILDING. A building with zero net energy consumption and zero carbon emissions annually as certified by an approved annual energy use analysis.

2.7.3 **Section C402.1.1 Low energy buildings**

Add the following exemption:

4. **Zero-Energy Buildings.** Zero energy buildings are exempt from the provisions of the International Energy Conservation Code.

2.7.4 **Section C402.1.2**

Add the following exemption:

Equipment buildings intended to house temperature sensitive equipment, not intended for human occupancy, and not exceeding 1000 sq. ft. will be exempt from the building thermal envelope provisions of this code.

2.7.5 **Section C404.5**

Delete this section in its entirety.

2.7.6 **Section R402.1 Low energy buildings**

Add the following exemption:

1. Zero-Energy Buildings. Zero energy buildings are exempt from the provisions of the International Energy Conservation Code.

2.7.7 **Section R402.4.2.1**

Revise to add the following exception:

All air barrier elements shall be installed as detailed in Table 402.4.1.1. and are inspected and verified with a checklist incorporated into the Quality Assurance Inspection Checklist and part of the "finished home" file for the building/dwelling. All elements of the air barrier shall be listed and installed per the manufacturer's installation instructions. A completed air barrier checklist shall be kept on file with the Division of Housing and the manufacturer's quality assurance program.

If not complying with the first paragraph, an air leakage test shall not exceed 5 air changes per hour in all climate zones and shall comply with one of the compliance methods in R401.2.

Construction Standards and Procedures for U.S. Housing and Urban Development (HUD) Homes

These standards and procedures are available through HUD at: https://www.hud.gov.

Pursuant to sections 24-32-3302(12), 24-32-3302(13), 24-32-3302(20), 24-32-3302(32), 24-32-3305(5), 24-32-3306(1), 24-32-3307(2), 24-32-3309(1)(a), and 24-32-3327, C.R.S., the State Housing Board adopts the following requirements for manufactured homes constructed to the "National Manufacturing Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq. (manufactured from June 15, 1976 to present):

2.8 Compliance with Title 24: Housing and Urban Development; Subtitle B—Regulations Relating to Housing and Urban Development (Continued); Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development; Part 3280—Manufactured Home Construction and Safety Standards, of Title 24.

2.9 Compliance with Part 3282—Manufactured Home Procedural and Enforcement Regulations of the same title, subtitle, and chapter in Rule 2.8 above as applied and enforced as the state administrative agency for the federal government.

2.10 Compliance with Part 3286—Manufactured Home Installation Program of the same title, subtitle, and chapter in in Rule 2.8 above, which is inspected and enforced through application of the Division of Housing's adopted Manufactured Housing Installation Codes.

2.11 Compliance with Part 3288—Manufactured Home Dispute Resolution Program of the same title, subtitle, and chapter in Rule 2.8 above as applied and enforced as the state administrative agency for the federal government.

Manufactured Home and Tiny Home Installation Standards

These standards and guidelines are available through the Division of Housing in the form of the "Manufactured Home and Tiny Home Installation Handbook" located at: https://www.colorado.gov/dola/division-housing.

2.12 Pursuant to section 24-32-3310, C.R.S., nothing in this rule is intended to interfere with the right of a local jurisdiction to enforce its rules governing the installation of a manufactured home or tiny home as long as those rules are not inconsistent with this rule. Pursuant to section 24-32-3318, C.R.S., a local jurisdiction may not adopt less stringent standards for the installation of a manufactured home or tiny home than those adopted by the Division and may not adopt a different standard without express consent by the Division. However, a local jurisdiction may adopt unique public safety requirements related to geographic or climatic conditions such as weight restrictions for snow loads or wind shear factors subject to the conditions outlined in section 24-32-3318, C.R.S.

2.12.1 Factory-built residential structures (modular) must be installed on a permanent foundation approved through the local jurisdiction. In areas where no building codes have been adopted, the foundation must be designed and approved by a State of Colorado licensed engineer unless plans are approved by the Division and in compliance with its adopted International Residential Code (IRC) foundation prescriptive requirements.

2.13 Primary Standards (required for all new homes):

2.13.1 The current written installation instructions provided by the manufacturer of the home.

2.13.1.1 An installation of a HUD-code home in this state must be performed in strict accordance with the applicable manufacturer's installation instructions. The value of the allowable bearing capacity of the soil the home will rest on must be recorded by the installer on the Installation Authorization form or other Division-approved form and justification for higher values also provided if it is determined to be other than 1,500 psf.

2.14 Alternate Standards (for older homes or homes that do not include the manufacturer's installation instructions) – installation must be in accordance with the following alternate standards adopted by the Division and State Housing Board:

2.14.1 Modular Homes and Tiny Homes

2.14.1.1 Structural attachment requirements approved by a State of Colorado actively licensed engineer.

2.14.1.2 Current version of the International Residential Code (IRC) as adopted by the State Housing Board.

2.14.2 Mobile and HUD-code Homes

2.14.2.1 National Fire Protection Association (NFPA) 225, Model Manufactured Home Installation Standard 2013 Edition, including any revisions, additions, and deletions identified below.

2.14.2.1.1 **Section 4.4.4 Site suitability with home design**

Revise to read as follows:

The installer shall verify data plates provided with a HUD-code home prior to installation in the state of Colorado. The data plate shall be matched with the home (serial numbers). The data plate shall indicate the following minimums:

Wind Zone: I

Thermal Zone: III

Roof Load: Middle (30 PSF)

If the data plate does not meet these minimum requirements, the installer shall not set the home. The installer is required to check with the local jurisdiction where the home will be located to determine if it is designed for the area's proven snow or wind load since some parts of the state are subjected to heavy snow and/or high winds.

2.14.2.1.2 **Section 5.3 Fire separation distance**

Revise to read as follows:

Fire separation distances shall comply with local rules or regulations. In their absence, the most current version of the International Residential Code (IRC) as adopted by the Housing Board applies.

2.14.2.1.3 **Section 5.5.2**

Revise to read as follows:

Soil that supports footings and foundations shall be capable of accommodating all loads required by this standard. To help prevent settling or sagging, the foundation must be constructed on firm, undisturbed soil or 90% compacted soil. The design bearing capacity of the soil shall be determined in accordance with Section 5.6.

2.14.2.1.4 **Section 5.6 Investigation and Bearing Capacity of Soil**

Revise as follows:

Soils that appear to be composed of peat, organic clays, uncompacted fill, expansive or other unusual conditions shall have a licensed engineer determine the classification and maximum allowable soil bearing capacity.

Otherwise the bearing capacity of the soil shall be assumed to be 1,500 psf.

A larger bearing capacity for the soil may be used as follows provided the class of soil is known:

Sandy gravel and/or gravel, very dense or cemented sands (GW, GP, SW, SP, GM, SM) ---------- 2,000 psf

Sedimentary and foliated rock---------- 4,000 psf

When a value other than 1,500 psf is determined for the soil bearing capacity it shall be recorded by the installer on the Division of Housing's Installation Authorization form and justification for higher values shall also be provided.

2.14.2.1.5 **Section 5.8.1 Vapor retarder**

Revise as follows:

If the space under the home is to be enclosed with skirting or other material, a vapor retarder that keeps ground moisture out of the home shall be installed unless specifically allowed to be omitted by the authority having jurisdiction.

2.14.2.1.6 **Section 5.8.3.2**

Revise as follows:

The vapor retarder may be placed directly beneath footings, or otherwise installed around or over footings placed at grade, and around anchors or other obstructions. Any voids or tears in the vapor retarder must be repaired.

2.14.2.1.7 **Section 6.2.3.1.2**

Delete this section.

2.14.2.1.8 **Section 6.2.3.1.3.1**

Revise as follows:

Tables 6.2.3.1.3(a), 6.2.3.1.3(b), and 6.2.3.1.3(c) for pier capacities, as replaced in Appendix A, shall be used

when the manufacturer's installation instructions are not available.

2.14.2.1.9 **Section 6.2.3.1.3.2**

Revise as follows:

Manufactured piers shall be rated at least to the capacities given in Tables 6.2.3.1.3(a), 6.2.3.1.3(b), and 6.2.3.1.3(c), as replaced in Appendix A, and locally constructed piers shall be designed to transmit these loads safely as required by 6.2.3.2.

2.14.2.1.10 **Section 6.2.3.2.2.2**

Revise as follows:

Caps shall be of solid masonry of at least 4 in. (100 mm) nominal thickness, or of treated or hardwood dimensional lumber at least 2 in. (50mm) nominal thickness, or of ½" thick steel.

2.14.2.1.11 **Section 6.2.3.2.3.1**

Revise as follows:

Nominal 4 in. x 6in. (100mmx 150mm) hardwood shims shall be used to level the home and fill any gaps between the base of the I-beam and the top of the pier cap. Any of the following hardwood species may be used: Ash, Beech, Birch, Hickory, Oak, Rock Elm, Black or Red Maple, or Sweetgum.

2.14.2.1.12 **Section 6.2.3.2.3.3**

Revise as follows:

Hardwood (species identified in the amendment to Section 6.2.3.2.3.1 above) or treated wood plates shall be used to fill in any remaining vertical gap no thicker than 2". The maximum total gap to be filled with shims and plates shall be 2".

2.14.2.1.13 **Section 6.2.5.5**

Revise as follows:

All homes. Supports shall be placed on both sides of side wall exterior doors and any other side wall openings greater than 48 in. (such as entry and sliding glass doors), and under porch posts, factory installed fireplaces and wood stoves. Size perimeter piers under openings based on Table 6.2.3.1.3(b), as replaced in Appendix A, "Exterior wall" where the actual side wall

opening shall be less than or equal to the spacing selected from the table.

Homes requiring perimeter blocking. Refer to Figure 6.2.5.3 and Figure 6.2.5.4 and Table 6.2.3.1.3(b), as replaced in Appendix A, for homes requiring perimeter blocking in addition to sidewall opening blocking described above.

2.14.2.1.14 **Section 6.3.1.2.2**

Delete this section.

2.14.2.1.15 **Section 6.5.2**

Delete this section.

2.14.2.1.16 **Section 7.2**

Revise as follows:

The home shall be installed and leveled by installation personnel approved by the State of Colorado to install manufactured homes.

2.14.2.1.17 **Section 7.3**

Revise as follows:

The interconnection of multi-section homes shall be completed in accordance with the manufacturer's installation instructions. When the manufacturer's installation instructions are not available, the interconnection of multi-section homes shall be in accordance with Table 7.3, as provided in Appendix A, or per the requirements approved by a State of Colorado licensed engineer.

2.14.2.1.18 **Section 7.5 Anchoring Instructions**

Section 7.5.1 Security against the wind

Section 7.5.1.1

Revise as follows:

After blocking and leveling, the installer shall secure the manufactured home against wind per Section 7.5.2 or Section 7.5.3. Anchorage shall be for Wind Zone I. Homes that are designed for Wind Zone II and III must be anchored per the Manufacturer's Installation Instructions or the requirements of a professional engineer.

2.14.2.1.19 **Section 7.5.2 Proprietary Anchorage Systems**

Add the following:

A proprietary anchorage system may be used to resist overturning and lateral movement (sliding) caused by wind as long as it complies with all of the following:

1. The system shall be listed by a nationally recognized third-party agency for anchoring manufactured homes.

2. The system shall be evaluated and approved by a licensed professional engineer.

3. The system shall be recognized as acceptable for use by the Division of Housing.

4. The installer shall follow the requirements in the anchorage system installation instructions.

2.14.2.1.20 **Section 7.5.3 Ground Anchor System**

Section 7.5.3.1 Specifications for Tie-Down Straps and Anchors

Add the following:

Straps and anchors are to have corrosion protection at least equivalent to that provided by a coating of zinc on steel of not less than 0.30 oz/ft^2 of surface coated. Straps and anchoring equipment must be capable of resisting a minimum ultimate load of 4,725 lbs and a working load of 3,150 lbs as installed; determined by a licensed professional engineer, architect or tested by a nationally recognized third-party agency. Straps are to be 1.25”x0.035” or larger steel strapping conforming to ASTM D 3953, Type 1, Grade 1, Finish B. Anchors are to be installed in accordance with their listing or certification to their full depth.

2.14.2.1.21 **Section 7.5.3.2 Number and Location of Anchors**

Section 7.5.3.2.1 Transverse Anchorage

Add the following:

The number and location of anchors and anchor straps for securing single-section and multi-section manufactured homes in the transverse direction shall conform to the manufacturer’s installation instructions. When relocating the home or when the manufacturer’s installation instructions are not available, the number and location of anchors and anchor straps shall conform to Table 7.5.3.2.1, Figure 7.5.3.2.1(a), and Figure 7.5.3.2.1(b), as provided in Appendix A.

2.14.2.1.22 **Section 7.5.3.2.2 Longitudinal Anchorage**

Add the following:

The number and location of anchors and anchor straps for securing single-section and multi-section manufactured homes in the longitudinal direction shall conform to the manufacturer's installation instructions. When relocating the home or when the manufacturer's installation instructions are not available, the number and location of longitudinal anchors and anchor straps shall conform to Table 7.5.3.2.2 and Figure 7.5.3.2.1(a), as provided in Appendix A.

2.14.2.1.23 **Section 7.5.3.2.3 Anchor Installation**

Add the following:

The installed ground anchor type and size/length must be listed for use in the soil class at the site and for the minimum and maximum angle permitted between the diagonal strap and the ground and all ground anchors must be installed in accordance with their listing or certification and the ground anchor manufacturer installation instructions. Unless the foundation system is frost-protected to prevent the effects of frost heave, the ground anchors shall be installed below the frost line. Ground anchor stabilizer plates shall be installed in accordance with the anchor and plate manufacturer installation instructions.

2.14.2.1.24 **Section 7.5.3.2.4 Side wall or over the roof straps**

Add the following:

If sidewall, over-the-roof, mate-line, or shear wall straps are installed on the home, they must be connected to an anchoring assembly.

2.14.2.1.25 **Section 7.6.3 Expanding Rooms**

Revise as follows:

Expanding rooms shall be installed in accordance with the manufacturer's instructions. When the manufacturer's instructions are not available, perimeter blocking shall be installed in accordance with Table 6.2.3.1.3(b), as replaced in Appendix A, and anchors shall be installed in accordance with Section 7.5.3.2.

2.14.2.1.26 **Section 7.7.4.2**

Revise (2) as follows:

(2) Walls-200.

2.14.2.1.27 **Section 8.1 Installation of Site-Installed Features**

Revise as follows:

Carports, awnings, porches, roof covers, and other similar attachments or additions shall not be supported by a manufactured home unless the home was specifically designed to accommodate such attachments or the attachment is designed by a licensed professional engineer. Non-structural connections for flashings and coverings at the junction are acceptable.

2.14.2.1.28 **Section 8.4**

Delete this section.

2.14.2.1.29 **Section 8.8.3**

Revise as follows:

Access opening(s) not less than 18 inches in width and 24 inches in height must be provided and located so that any utility connections are accessible.

2.14.2.1.30 **Section 8.9 Telephone and Cable TV**

Revise as follows:

Telephone, cable TV, and similar wiring shall be installed per the Authority Having Jurisdiction (AHJ) requirements and the National Electric Code (NEC).

2.14.2.1.31 **Section 9.4 Range, Cooktop, Oven Venting, and other Fixtures or Appliances**

Add new Section 9.4.3 to read as follows:

If other fixtures or appliances are to be site-installed, follow the manufacturer's installation instructions. Use only products listed for manufactured homes and follow all applicable local codes.

2.14.2.1.32 **Section 9.7 Furnace, Water Heater, and other Fuel Fired Appliances**

Add this new section to read as follows:

Verify appliance is installed per the manufacturer's installation instructions including any combustion air requirements. Verify flues are in place and are properly connected and extend through the roof with flashing and caps.

2.14.2.1.33 **Section 10.4.2 Orifices and Regulations**

Revise as follows:

Before making any connection to the site supply, the inlet orifices of all gas-burning appliances shall be checked to ensure they are correctly set-up for the type of gas to be supplied and are sized correctly for the altitude above sea level where the home is set. The manufacturer's installation instructions for the appliance shall be followed.

2.14.2.1.34 Chapter 11 Life Safety Features

Revise as follows:

2.14.2.1.34.1 **Smoke Alarms**

Verify smoke alarms are installed to protect the living area, rooms designed for sleeping, on upper levels, and in the basement for homes installed over a basement. Verify smoke alarms are installed and operating properly to meet the requirements of 24 CFR 3280.

2.14.2.1.34.2 **Carbon Monoxide Alarms**

An approved carbon monoxide alarm shall be installed outside of each separate sleeping area within 15 feet of the entrance to the bedrooms in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages.

2.14.2.1.34.3 **Fire Separation Distance**

Fire separation distances shall comply with local rules or regulations. In their absence, the most current version of the International Residential Code (IRC) as adopted by the State Housing Board, shall apply.

2.14.2. 2 Permanent Foundations Guide for Manufactured Housing (4930.3G), , published by the U.S. Department of Housing and Urban Development (HUD), including any revisions, additions, and deletions identified below, or the most recent version.

2.14.2.2.1 Appendix B – Foundation Design Load Tables

Revised as follows:

In the multi-section tables under the marriage wall opening width (ft.), the values given for required effective footings area – Aftg (sq.ft.), shall be divided by 2.

2.15 Upon written request, the Division of Housing will consider modifications to the standards or alternate materials and methods of construction. The Division of Housing will require that sufficient evidence or proof be submitted to support and substantiate the modification or alternate request.

2.15.1 The Division of Housing may approve any such modification or alternate, provided the Division of Housing finds that the proposed modification or alternate conforms with the intent and purpose of the standards and is equivalent in suitability, strength, effectiveness, durability, safety, and sanitation.

2.15.2 The approval of any modification and/or alternate by the Division of Housing will be made in writing and is required prior to commencing the work in question.

2.15.3 In the event that a local jurisdiction or the State has declared a state of emergency, the Division of Housing (DOH) may, upon written request from the local jurisdiction, allow an alternative method of design for the construction of the unit to comply with local provision as adopted by the local jurisdiction. This modification would allow a less stringent design by a local jurisdiction that has site specific information to allow such construction, and is approved to that specific jurisdiction. The modification should not require a more stringent requirement than what is already approved by the DOH. An approved DOH insignia will be adhered to the structure at final approval.

Rule 3. Fees.

Pursuant to sections 24-32-3309(1)(a), 24-32-3315(5), and 24-32-3323(3), C.R.S., the State Housing Board establishes the following schedule of fees, which are not subject to refund, are due in advance, and must accompany the appropriate application, except for certain inspection fees:

3.1	Annual registration fees:		
	3.1.1	Plant/Manufacturer:	$600.00
		3.1.1.1 Plant/Manufacturer Three Year	$1,800.00
	3.1.2	Inspection Agency:	$250.00
	3.1.3	Seller:	$200.00
	3.1.4	Installer:	$150.00
	3.1.5	Independent Inspector:	$450.00
	3.1.6	Late re-registration fee	$100.00
3.2	Plan checking fees:		
	3.2.1	Finished space:	$0.25 per sq. ft. ($160 min.)
	3.2.2	Unfinished space (attics, lofts, garages, etc.):	$0.10 per sq. ft.
3.3	Supplemental plan check fee (revisions, etc.):		$0.10 per sq. ft. ($50 min.)
	3.3.1	2nd Revision Plan Check Fee	$100.00

3.4	Third party oversight plan check fee:		$0.15 per sq. ft. ($100 min.)
3.5	Insignia fees:		
	3.5.1	Primary Insignia:	$125.00
	3.5.2	Additional Floor Tag:	$125.00
	3.5.3	Inspection-only Tag:	$125.00
	3.5.4	Component-only Insignia:	$125.00
	3.5.5	Modification Insignia:	$125.00
	3.5.6	Installation Insignia (free for participating jurisdictions):	$60.00
3.6	Inspection fees:		
	3.6.1	Plant/Factory certification inspection fee:	$350.00 per inspection
	3.6.2	Oversight inspection fee, including re-inspections:	$270.00 per inspection/address
		(A) An additional Multi-Box fee is required if the unit has more than 3 boxes – add $25.00 per box, up to a maximum of $1,875.00.	
		(B) Multi-family IBC Inspection Fee	$270 per inspection address plus an addition multi-box fee is required if the unit has more than 3 boxes – add $25 per box. An all-day (up to 8 hours) fee may be determined if necessary. Multi-day fees will require extra fees for lodging/food.
	3.6.3	Special inspection fee:	
		(A) In-State: $50.00 per hour, per inspection, plus trip expenses of travel, food, lodging, parking, car-rental, etc., as allowed in state fiscal rules for per diem and travel.	
		(B) Out-of-State units manufactured in Colorado:	$350.00 per inspection/unit
	3.6.4	Modification inspection fee:	$175.00
	3.6.5	Installation inspection fee:	
		(A) Rough or Final or Foundation:	$200.00
		(B) Re-inspection fee:	$200.00
		(C) Multi-family Installation Fee	$270 per inspection address plus an addition multi-box fee is required if the unit has more than 3 boxes – add $25 per box.

An all-day (up to 8 hours) fee may be determined if necessary. Multi-day fees will require extra fees for lodging/food.

(D) Cancelled Inspection fee – same day Full fee

3.6.6 Non Compliance/Prohibited Sale/Red Tag fee: $250.00

3.7 Certificate of Occupancy fee (only applies to hotels, motels, and multi-family structures in those areas of the state where no standards exist): $125.00

3.8 Waiver of fees:

3.8.1 Pursuant to section 24-32-3315(7)(a), the Division of Housing does not charge for certification of installers.

3.8.2 The Division of Housing waives the fee for certification of an independent inspector.

3.8.3 The Division of Housing does not charge for installer or inspector exams.

3.8.4 The Division of Housing waives the fee for certification of a plant/manufacturer.

3.8.5 The Division of Housing may waive fees for plan reviews and unit certifications that are subsidized under local, state, or federal housing programs for low-income households, and being constructed by the State of Colorado, a local government, or a nonprofit agency.

3.8.6 The Division of Housing waives the insignia fee for local jurisdictions that perform installation inspections as authorized participating jurisdictions.

Rule 4. Factory-Built Residential Structures (Modular and Tiny Homes) and Non-Residential Structures (Commercial) Requirements

4.1 Every “factory-built structure” as defined in section 24-32-3302(11), C.R.S., that is manufactured, sold, offered for sale, or occupied in this state must display an insignia issued by the Division of Housing certifying that the structure is constructed in compliance with the codes adopted by the State Housing Board. This does not apply to factory-built structures manufactured or sold for transportation to and installation in another state. However, if the unit were to return to Colorado for use, then it would require an insignia issued by the Division of Housing. To assist with the certification process, pursuant to section 24-32-3303(1)(a), C.R.S., a “manufacturer” as defined in section 24-32-3302(23), C.R.S., is required to be “registered” (based on qualifications) or “certified” (based on performance) with the Division of Housing.

4.1.1 Registration or certification is for a specific manufacturing facility location, and is not transferable to any other location including those of the same manufacturer.

4.1.2 A registered or certified manufacturer is required to inform the Division of Housing of a change in ownership, address, or location within ten (10) business days of such change.

4.2 Registered/Certified manufacturers are required to have that facility’s production approved through an initial review of its Quality Control (QC) program and the Quality control personnel that

ensure construction code compliance. The Division of Housing must be notified of any changes to the QC program or personnel.

4.3 The manufacturer's QC department must perform "no cover" inspections for all phases of construction on all structures and witness all required tests, regardless of whether the facility is registered or certified.

4.4 Upon the manufacturer's receipt of the approved plans and manual, the third party agency may schedule facility oversight inspections.

4.5 Manufacturers who sell direct to purchasers of one or two family dwellings must register as a Seller with the Division of Housing and follow all statutory and Administrative Rules requirements. See Rule 5.

4.5.1 The exception is if the purchaser is a developer who in turn plans to resell the home to the end-user; the developer in that scenario is required to be a registered seller with the Division of Housing.

4.5.2 Manufacturers who receive purchaser down payments from registered sellers or directly from intended home-owners, must provide the following protections for down payments in excess of the cost of materials, construction, design, and administration of the specific home ordered by the consumer:

(1) Provide to the Division of Housing a letter of credit or surety bond in the amount of $100,000 which the Division of Housing may call upon after an enforcement action for cancellation or failure to deliver a unit when the down payment is not returned.

(2) Make available to the Division of Housing upon request an accounting of deposits received, and amounts spent for materials, construction, design and administration for each unit from time of deposit received to delivery of the unit IF the Division requests this information as part of an audit to verify compliance.

4.6 In order to provide efficiency, manufacturers building multi-family or commercial units as a part of a development project of 5 or more units must contact the Division of Housing and provide a project plan that includes: project schedule, production schedule, on-site construction items, and installation plan and schedule. It is recommended to contact the Division of Housing early in the plan process, even before all the required documents are available. The Division will evaluate the materials provided, meet with the respective parties, and determine a total estimated fee schedule. Overnight stays by inspectors may require additional expenses.

Manufacturer Registration

4.7 Once issued by the Division of Housing's Building Codes & Standards Section, a registration is active for one (1) year or three (3) years after completing the first year and must be successfully renewed in order to continue manufacturing structures in the state of Colorado or shipping them into the state. Three year registrations will require an email or letter regarding any material changes (or no changes) to operations annually.

4.8 At the time of registration, all manufacturers are required to have Division of Housing approval, in writing, of the third party agency or agencies that will conduct the production inspections and certification of Colorado units on behalf of the Division of Housing. A manufacturer is also required to request approval of the Division of Housing thirty (30) days prior to any subsequent change of its third party agency.

Certified Manufacturer Status

4.9 A manufacturer must maintain an active Colorado registration for each manufacturing facility requesting Certified status.

4.9.1 Out of state registered manufacturers must utilize a third party agency to submit a recommendation for certified manufacturer status to the Division of Housing.

4.9.2 In-state registered manufactures may utilize a third party agency to submit a certified manufacturer recommendation OR request certified manufacturer status from the Division of Housing.

4.9.3 Each manufacturing location will require a separate certified manufacturer recommendation.

4.9.4 The Division of Housing and authorized third party agencies will utilize the following criteria for approval of registered manufacturers requesting certified manufacturer status.

(A) Verify accountable personnel are capable of identifying and addressing non-conforming items.

(B) Verify that training has been achieved for all accountable personnel.

(C) Verify an established and functioning quality assurance program

(D) Verify that the last three units delivered to Colorado have completed production in compliance of (A), (B), and (C) above.

4.9.5 Manufactures who previously qualified for the Division of Housing's Certified Factory Status may continue with this status for one year, but are required to complete the new certified manufacturer status by July 1, 2024.

4.9.6 Recommendations received from a third party agency will be reviewed, and if deemed compliant, approved by the Division of Housing and a letter will be sent to the recommending agency, the certified manufacturer and the third party agency doing production inspections.

4.10 All certified manufacturers are registered manufacturers and must follow all registered manufacturer requirements unless specifically exempted or changed in these rules.

4.11 Certified manufacturer status for a specific facility is considered ongoing unless the manufacturer fails to perform as described in 4.12. An annual letter will be required from the manufacturer regarding any changes, or stating no changes, in the quality assurance program in order to continue certified manufacturer status.

4.12 The Division of Housing may immediately seek summary suspension to remove the designation of certified manufacturer status for failure to remedy any of the following conditions after notice from the Division of Housing:

4.12.1 The change of a third party agency or change in that entity's status.

4.12.2 The change of a facility location.

4.12.3 The manufacturer has had insignias of approval removed pursuant to Division of Housing procedures.

4.12.4 Failure to remedy manufacturing defects or deficiencies as identified by the Division of Housing and failure to provide a quality assurance program update on corrective actions taken to remedy identified defects or deficiencies.

4.12.5 Notification by a third party agency regarding failure to meet quality control guidelines.

4.12.6 The factory is not in compliance with "*Performance Criteria for Monitoring Manufacturers and Third Party Inspection Agencies*".

4.12.6.1 The "*Performance Criteria for Monitoring Manufacturers and Third Party Inspection Agencies*" utilizes a combination of qualitative analysis based on deficiencies identified during inspection, qualitative analysis based on systematic failures and recurring serious deficiencies,

4.13 A registered manufacturer whose status as a certified manufacturer has been removed by the Division of Housing will resume operations on a higher frequency of inspections until its performance improves and is recommended for reinstatement of its certified manufacturer status pursuant to Rule 4.9 of these rules.

Renewal

4.14 Each manufacturer is required to resubmit its quality control manual (and when applicable, plans) for approval prior to the registration expiration date that is stamped on the quality control manual. This Quality Control manual resubmission is required regardless of when plans are approved or structures shipped. Failure to comply with this requirement will result in that manufacturer's registered location having to comply with the initial registration inspection requirements.

4.14.1 The registration expiration date for all manufacturers is determined by the expiration date that is stamped on the quality control manual. Plans that are submitted at the time of registration or within the registration period shall have the same expiration date as the quality control manual.

4.14.2 It is the responsibility of the manufacturer to submit to the Division of Housing the quality control manual for approval within the authorized sixty (60) day renewal window prior to the expiration date.

Plan Review

4.15 All registered or certified manufacturers must obtain prior approval of each set of designs from the Division of Housing or third party agency before constructing structures under those plans.

4.15.1 The Division of Housing will expedite the review and approval of plans from registered or certified manufacturers whose plans have been reviewed and pre-approved by a third party agency who accepts responsibility and liability in ensuring compliance with requirements of these rules and applicable codes.

4.15.2 Life safety corrections will be sent back to the manufacturer and the third party agency that pre-approved the plans. Third party agencies who continue to pre-approve plans after notification of life safety plan corrections must provide a report on internal quality assurance corrective actions taken to the Division of Housing.

4.15.3 The Division of Housing and third party agencies will utilize redline comments for minor changes and corrections.

4.16 Plan approvals are granted to a manufacturer for a specific manufacturing facility and are not transferable to other manufacturing facilities including those of the same manufacturer.

4.17 Applications for plan review and approval must be submitted electronically to the Division of Housing and must be accompanied by the appropriate fees from Rule 3 of these rules.

4.17.1 The application must include the quality control manual; it must meet or exceed the minimum requirements as specified by the Division of Housing.

4.17.1.1 On-site Construction (OC) as defined in Rule 1.19 of these rules, must be clearly denoted on the submitted plans for determination of the model as an "OC)" structure. The manufacturer is required to follow the Division of Housing "On-site Construction Procedures" when the model is determined to be an OC. Determination of a model as an OC may happen during plan approval or after plan approval.

4.17.2 All applications must list an officer of the manufacturer that is in a responsible position with the authority to commit the manufacturer to comply with the rules and regulations that govern the regulation of its factory-built structures and tiny homes.

4.17.3 Factory-built structure and tiny home plans will meet any unique local government standards regarding wildfire risk.

4.17.4 Plans are approved only for a specific address unless the climatic and geographic design and wildfire risk conditions are equal to or less stringent than what was approved.

4.17.5 Multi-family plans submitted for review must include the applicable sections required by the Division of Housing plan review checklist. Included in that submittal, the plans must have a separate section that clearly describes the details for the installation of that building including but not limited to structural connection hardware and fasteners, sheer wall schedules, hold down schedules, plating and drag requirements and all connections that need to be inspected during the setting of the modular units, and must provide a separate manufacturer installation handbook that is clearly referenced on the cover sheet of the plan set, preferably where the building codes are referenced.

4.18 An application will expire and all fees forfeited if it is not completed within 120 days of the initial application date.

4.18.1 Expired applications must be resubmitted as new applications electronically with documentation and fees.

4.19 In order to be considered approved, plans and quality control manuals must be stamped by the Division of Housing or third party agency. Revisions, additions, or deletions will not be acceptable without prior approval.

4.19.1 An approved copy of the quality control manual and plan must be retained at the place of manufacture.

4.19.1.1 They must be kept on file within the specific location of manufacture for the purpose of construction and inspection by Division of Housing inspectors or the third party agency.

4.19.2 All third party agency approvals must be submitted to the Division of Housing for review and oversight approval.

4.20 Plan approval does not guarantee a manufactured structure constructed from the approved plan will also be approved. All structures must also undergo an inspection and receive an insignia of approval in order to be considered certified by the State of Colorado. A plan approval does not prevent the Division of Housing or the third party agency from requiring the correction of errors found in the plans or the unit itself, when found in violation of these rules.

4.21 Revisions to the approved plan are required where the manufacturer proposes a change in structural, plumbing, heating, electrical, or fire life safety systems. Such changes must become part of the approved plan unless the Division of Housing determines that the change constitutes a new model. If determined a new model, the interim change will be processed as a new application. Any difference in fees will also be assessed.

4.22 The Division of Housing will approve unchanged plan renewals it previously reviewed and approved, provided there has been no change in adopted codes and the manufacturer's officer in Rule 4.17.2 above certifies in writing that the plans are identical to those previously approved by the Division of Housing. A "Supplemental Plan Check Fee" will apply for plan renewals.

4.22.1 Should it be determined by the Division of Housing that unauthorized changes have been made to an approved plan, the manufacturer will be subject to a "Red Tag Fee" for every structure built to the changed plans, and the Division may require additional inspections to ensure the code compliance of the structures.

4.23 When amendments to these regulations require changes to be made to an approved plan, the Division of Housing will notify the manufacturer of the requirement and allow it a reasonable time to submit revised plans for review and approval. Revised plans will be processed as interim changes with the appropriate fees assessed.

4.24 Approved plans expire with the factory registration. Plans must be resubmitted and the Supplemental Plan Check Fee will apply. New plans approved within 120 days of the manufacturers' registration expiration date will not be required to resubmit plans for renewal until the next registration cycle. If the manufacturer fails to register on time, due to fault of their own, those plans are no longer valid and will be required to be renewed. The asset for that structure is required to have been created and construction started before the expiration to be exempt from the renewal process for that specific plan and structure.

4.25 Tiny home plans must include: details on the vehicle chassis, including drawings and connections, and whether the tiny home is going to be installed on a permanent or temporary foundation.

Inspections

4.26 All structures manufactured, sold, or offered for sale in the state of Colorado must display the Division of Housing insignia of approval affixed either by the Division of Housing, an authorized third party agency, or by a certified manufacturer. These insignias certify that the unit is constructed in compliance with applicable codes and regulations adopted by the State Housing Board. This does not apply to factory-built structures or tiny homes manufactured or sold for transportation to and installation in another state. However, if the unit were to return to Colorado for use, then it would require an insignia issued by the Division of Housing.

4.26.1 Registered (non-certified) and certified manufacturers must apply for Colorado insignias through the Division of Housing and submit the appropriate fees provided in Rule 3 of these rules.

4.26.1.1 For units that are completed at the manufacturing facility (are not OC units), insignias will be affixed to each structure only upon final inspection approval by the Division of Housing or an authorized third party agency

4.26.1.2 For units that have on-site construction items, insignias will be affixed to each structure after an OC inspection by the Division of Housing or a third party agency or a local building department that has agreed to accept responsibility for the inspection of the OC items.

4.26.1.3 Insignias affixed by an authorized third party agency or a certified manufacturer must be reported to the Division of Housing, including the insignia number, type of insignia of approval affixed (residential or commercial), manufacturer, serial number, date of manufacture of the structure, and the first destination of the shipped structure. A manufacturer is required to provide a copy of its monthly production report.

4.26.1.3.1 The Division of Housing may elect to not issue additional insignias of approval to a third party agency or certified manufacturer if all insignias affixed are not timely and completely reported.

4.27.2 Insignias are assigned for use at a specific location and cannot be transferable or used on an unapproved structure. Colorado insignias of approval issued for one type of certification may not be used on a structure of another (different) type. A silver 3”x5“ primary insignia (one or two family dwellings, except tiny homes) documenting manufacturer and design information is required for each structure to be installed in the state, or a blue 3”x5” primary insignia (commercial) documenting manufacturer and design information is required for each box to be installed in the state. A primary pink 3”x5” insignia will be required for each Tiny Home. A primary black 3x5 insignia will be attached to the primary box or Division of Housing approved location of each multi-family dwelling unit.

4.27.2.1 For residential only - each additional habitable floor section requires a silver 2”x2” “Additional Floor Tag” insignia7

4.27.2.2 For commercial only – an approved modification requires a green/silver 3”x5” “Modification” insignia.

4.27.2.3 For commercial only – components of a structure requires a purple 3”x5” “Component-only” insignia.

4.27.2.4 Both – factory-built structures inspected for another state requires a green 2”x2” “Inspection-only” insignia.

4.27.3 The primary insignia for residential and tiny homes must be permanently affixed inside the kitchen sink cabinet or inside the vanity cabinet if there is no kitchen sink. For certified manufacturers, this must occur prior to structures being removed from the production location that is certified. Additional Floor Tag insignias, if applicable, are to be permanently affixed and located directly under the primary insignia.

4.27.3.1 The primary insignia must contain the serial number, date of manufacture, wind design speed, roof design load, seismic zone, and construction codes.

4.27.4 Colorado insignias are the property of the State of Colorado and may be confiscated by the Division of Housing upon any violation of these rules. Defaced, marked in error, or voided insignias must be returned to the Division of Housing without refund.

4.27.5 Dates on insignia are completion dates.

4.27.6 For installation and inspection insignias, the name of the installer or inspector is required. Not the company name.

4.28 Whenever an on-site inspection reveals that a structure fails to comply with any provision of these rules, the Division of Housing or the third party agency may affix a "Red Tag Notice" on the structure. All manufacturers must correct any construction code violations within thirty (30) calendar days of inspection. Life safety corrections may require less than 30 days to correct. An extension may be granted when submitted in writing to the Division of Housing.

4.28.1 Once notified of a "Red Tag Notice" by the Division of Housing or the third party agency and the specific violation(s), the affected parties must resolve the issue(s) with the entity that posted the notice.

4.28.2 Within five (5) working days, the affected parties or their agents must notify, in writing, the Division of Housing or the third party agency of the action taken to correct the violation(s) and what steps have been taken by management to preclude the recurrence of the violation(s). Failure to respond within five (5) days may cause revocation of an affected party's status.

4.28.3 A structure posted with a "Red Tag Notice" cannot be sold, offered for sale, or have occupancy in the state of Colorado, nor can it be moved or caused to be moved without the prior written approval of the Division of Housing or the third party agency.

4.28.4 All structures posted with a "Red Tag Notice" must be corrected or removed from the state (with prior written approval of the Division of Housing or the third party agency). All structures that are corrected will be re-inspected to assure compliance with the codes and regulations, and a re-inspection fee will be assessed.

4.28.4.1 Multiple violations may result in the Division of Housing suspending plan reviews submitted by the manufacturer until all issues are addressed.

4.28.5 A "Red Tag Notice" may be removed only by an authorized representative of the Division of Housing or the third party inspection agency.

4.29 Factory-built structures may not be modified, prior to or during, installation at a site without approval from the Division of Housing. Once installed and its installation certified (factory-built residential structures only), any substantial alternation or repair made to the construction of the structure (both residential and nonresidential) already certified by the Division of Housing and on-site is under the jurisdiction of the local building department.

4.30 The Division of Housing and/or the third party agency retained by the manufacturer will conduct certification and production inspections of all manufacturers engaged in manufacturing or offering for sale factory-built structures in the state of Colorado. This inspection will include the quality control program and systems testing. This does not apply to factory-built structures manufactured or sold for transportation to and installation in another state. However, if the unit were to return to Colorado for use, then it would require an insignia issued by the Division of Housing.

4.30.1 Payment of the fees provided in Rule 3 is required if utilizing the services of an inspector from the Division of Housing. This cost is not refundable.

4.30.2 All in-state manufacturers shall have the option to contract with a third party agency or continue to use the Division of Housing to perform certifications and in-plant production inspections, to evaluate its registered/certified location's Quality Control procedures, approve manufacturer engineering manuals and installation instructions and/or approve construction plans.

4.30.3 Out of state manufacturers are required to obtain the services of a third party inspection agency to perform certifications and in-plant production inspections, to evaluate the plant's Quality Control procedures, and may use an approved third party agency to approve manufacturer engineering manuals, installation instructions, and/or approve construction plans.

4.30.3.1 Another state where a registered/certified manufacturer is located may act as a third party agency for certifications, in-plant production inspections and evaluations of their Quality Control procedures provided it enters into a memorandum of understanding with the Division of Housing and the manufacturer follows all requirements for that entity.

4.31 A third party agency may consist of one of the following entities (any exceptions must have prior approval by the Division of Housing):

(A) States – must enter into a memorandum of understanding with Colorado.

(B) Local Government – must adopt Division-approved local ordinance or rule.

(C) Firms – must currently be listed with a national listing agency such as the International Code Council (ICC), International Accreditation Service (IAS), or other Division-approved entity.

4.32 Other states that wish to operate as a third party agency inspecting registered/certified manufacturers located in their state and structures manufactured in their state that are to be shipped to Colorado must have existing statutory authority to regulate the design and construction of factory-built structures and enter into a memorandum of understanding with Colorado to establish recognition of the following:

(A) Acceptance of construction codes that are adopted by the State of Colorado Housing Board for factory-built structures sold into or offered for sale in Colorado. (See Rule 2 of these rules).

(B) Acceptance of the design evaluation and approval performed by the Division of Housing or other third party agency for structures sold into or offered for sale in Colorado.

(C) Performance of facility certifications and other inspection requirements. Routine inspections include performing inspections of at least one (1) unit in each phase of manufacturing and performing a minimum of a rough, final, and other inspections and/or tests (as required in Rule 2 of these rules) when a production line process is not being utilized. Also to place the manufacturer on a higher frequency of inspection when it is unable to conform, on a continuing basis, to approved Quality Control procedures and or approved plans and standards.

(D) Evaluation, at the manufacturing facility, of code compliance problems resulting from consumer complaints on labeled Colorado structures; work with the manufacturer(s) in resolving such complaints by adequately following up and assisting them in correcting the complaint issue(s), and their production and/or inspection process.

(E) Provide sixty (60) days notice before withdrawing from the memorandum of understanding, thereby allowing a manufacturer sufficient time to obtain a new third party agency.

4.33 Manufacturers contracted with a firm to perform its inspections are required to be inspected by that entity. A manufacturer may contract with more than one approved third party agency to perform these services. If more than one third party agency is under contract, the Division of Housing must be notified as to which inspections each agency is assigned; more than one agency cannot be assigned to the same inspection.

4.33.1 Approved third party agencies are authorized to conduct certifications, in-plant production inspections, recommend certified manufacturer status, in-plant evaluations of the plant's quality control procedures, review manufacturer engineering manuals, approve plant construction plans, or perform on-site construction (OC) field inspections, in accordance with Division of Housing approved procedures and documents.

4.33.2 The structure will be inspected to the approved plans; except where the plans are not specific, then the inspection will be to the standards. The third party agency will also monitor the facility personnel performing the construction, testing, and inspections.

4.33.3 A third party agency, when a facility is not certified, must conduct at a minimum a rough, final, and other inspections as required per code (see Rule 2 of these rules) for all structures manufactured. For tiny homes, a vehicle chassis inspection must be completed.

4.33.4 After the Division approves certified status for a manufacturer based on the recommendation from an approved third party agency OR the Division of Housing if the manufacturer has requested the Division of Housing grant it certified manufacture status, a minimum of one (1) phase of construction for each structure being produced for Colorado must be inspected by the third party agency. In the course of each visit, the third party agency may also complete an inspection of every phase of the production, systems testing, and of every structure in production as well as a random sampling of finished product on site.

4.33.5 Whenever the third party agency finds that a manufacturer is unwilling or unable to conform on a continuing basis to the approved quality control procedures, or approved plans or standards, that manufacturing facility will be placed on a higher frequency of inspection. The Division of Housing must be notified and the certification labels for units held until the manufacturer demonstrates that it can perform within its approved standards. If after three (3) consecutive inspections, the last inspection still indicates that the manufacturer is not able to perform within standards, all remaining insignias paid for by the manufacturer will be returned to the Division of Housing and the manufacturer will need to reapply for certified status after the time period in 7.1.1.

4.33.6 Additional information, such as increased frequency and routine quality assurance inspection reports, will be requested by the Division of Housing in order to review the inspections conducted on specific units.

4.33.7 The third party agency is required to provide its own inspection label to be affixed adjacent to the Colorado insignia of approval on each structure to be installed in Colorado prior to shipping.

4.33.8 All manufacturers that use a third party agency, other than another state, to perform production inspections, recommendations for certified manufacturer status, evaluate quality control procedures, approve engineering manuals, or approve plans, must have

such agency request approval from the Division of Housing to be an approved third party agency for the State of Colorado. Approval requests must contain the following minimum requirements:

(A) Name and address of the entity making application.

(B) Categories for which the third party agency seeks approval.

(C) A list of key personnel, with resumes, indicating their primary functions or duties.

(D) The number of years the entity has actively engaged in the business for which it seeks approval.

(E) A statement by the third party agency that it will adhere to all the requirements of the Division of Housing.

(F) An explanation of its plan review, plant certification, and/or inspection procedures, including copies of the quality assurance and other inspection reports.

(G) A copy of the third party agency's International Code Council (ICC), International Accreditation Service Board (IAS).The Division of Housing may consider alternative accreditation upon request.

(H) A copy of the Colorado professional engineer or architect certification for any employee that will be responsible for plan review and approval work as required.

(I) A copy of the Colorado professional license or ICC building inspector certifications (commercial or residential) for all personnel that will be performing production facility inspections as required.

(J) Agreement to furnish any other existing records that the Division of Housing may deem necessary in order to properly evaluate and grant approval.

(K) A statement that it is independent and does not have any actual or potential conflict of interest and is not affiliated with, influenced by, or controlled by any present or potential client manufacturer in any manner that might affect its capacity to render service or reports of findings objectively and without bias.

(L) The request must contain the signature of a responsible officer, owner, or partner of the submitting third party agency.

(M) A list of manufacturers of factory-built structures that are currently inspected.

(N) Third party agencies recommending certified manufacturer status must also provide details and documentation on how the agencies evaluation process meets the states criteria in Rule 4.9. This should include checklists, pass/fail criteria, a sample recommendation, and internal quality control and quality improvement documentation.

4.33.9 Third Party Agencies that wish to perform inspections of registered/certified manufacturers and their structures must agree to the following:

(A) Acceptance of construction codes that are adopted by the State of Colorado Housing Board for factory-built structures sold into or offered for sale in Colorado. (See Rule 2 of these rules).

(B) Acceptance of the design evaluation and approval performed by the Division of Housing or third party agency for structures sold into or offered for sale in Colorado.

(C) Acceptance and use of the Division of Housing's "Performance Criteria for Monitoring the In-Plant Quality Control Systems of Factory Built Plants" for in-plant inspection agencies or Division of Housing approved third party agency adopted criteria.

(D) Acceptance and use of the Division of Housing "Performance Criteria for Factory-Built Plan Review and Approval" for plan review agencies or Division of Housing approved agency adopted criteria.

(E) Performance of facility certifications and other inspection requirements. Routine inspections include performing inspections of at least one (1) unit in each phase of manufacturing and performing a minimum of a rough, final and other inspections and/or tests (as required in Rule 2 of these rules) when a production line process is not being utilized. Also to place the manufacturer on a higher frequency of inspection when it is unable to conform, on a continuing basis, to approved Quality Control procedures and or approved plans and standards.

(F) Performance of inspection requirements. Routine inspections include performing inspections of at least a minimum of a rough, final, and/or other inspections and/or tests of on-site construction items. Also to notify the Division of Housing when a manufacturer is unable to conform, on a continuing basis, to approved plans, standards, and/or make appropriate corrections to construction code compliance issues.

(G) Evaluation at the manufacturing facility of code compliance problems resulting from consumer complaints on labeled Colorado units; work with the manufacturer(s) in resolving such complaints by adequately following-up and assisting them in correcting the complaint issue(s) and their production and/or inspection process.

(H) Provide sixty (60) days' notice if no longer interested in fulfilling the above terms, thereby allowing a manufacturer sufficient time to obtain a new third party agency.

4.33.10 Third party agencies may only work in the specific categories for which the Division of Housing has granted approval in writing.

4.33.11 The performance (every aspect of all actions) of all third party agencies will be periodically monitored by the Division of Housing at a frequency adequate to assure that they are fulfilling their responsibilities as required in these rules. The purpose of these certification and other inspections are to evaluate the performance of the manufacturer and inspection agency in ensuring the selected units comply with approved plans and construction codes. Based upon finding(s) of inadequate performance, the frequency of inspections may be increased as determined by the Division of Housing procedures.

4.33.11.1 The monitoring activities carried out by the Division of Housing will consist of the following:

(A) Performing oversight inspections on structures that are shipped to Colorado or produced in Colorado.

(B) Reviewing all records of interpretations of the standards made by the third party agency to determine whether they are consistent and proper.

(C) Reviewing inspection reports, records, and other documents to assure that third party agencies are carrying out all their responsibilities as set forth in these rules.

(D) Reviewing records to assure that the third party agency is maintaining proper label control and records pursuant to the requirements of this program.

4.32.11.2 The Division of Housing will, upon written request, investigate complaints related to adopted construction code interpretation and enforcement. A written request must identify the third party agency, the location of the structure(s) in question, the nature of the dispute, the code section reference, and all involved parties with contact information. Upon receipt of the request, the Division will contact all parties for a written response to the issues. After any necessary follow up, the Division will issue to all parties an interpretation to resolve the code dispute. The Division's interpretation may be appealed to the Colorado State Housing Board's Technical Advisory Committee. The decision of the committee is final.

Rule 5. Sellers of Manufactured Homes

Registration

5.1 Exceptions:

5.1.1 A Colorado licensed real estate broker is exempt from the requirement to be a registered seller when selling manufactured homes or tiny homes pursuant to section 24-32-3323(4)(b), C.R.S., if they are acting as a third party (do not own the manufactured home or land it is installed on) in the transaction and are involved in negotiating the sale or lot rent of the land the manufactured home or tiny home is installed on in addition to the sale of the manufactured home or tiny home.

5.1.2 A registration as a seller is not required for any transaction involving the sale of a factory-built structure, residential or nonresidential, that is constructed to the International Building Code (IBC).

5.2 Manufacturers who sell direct to purchasers of one or two family dwellings must register as a seller with the Division of Housing and follow all statutory and administrative rule requirements of this Rule 5.

5.3 As part of the registration process, a seller is required to establish and maintain an escrow account for all manufactured housing or tiny home down payments received from purchasers during the annual registration period if the total amount received prior to the delivery (as defined pursuant to section 24-32-3302(6.5), C.R.S.) of the manufactured homes is greater than $50,000; they elect to not obtain the coverage identified in Rule 5.3(B); and the money collected is not utilized for purposes of Rule 5.3(C)(2) and (3).

(A) If unable to establish an escrow account, for purposes of compliance with this rule, a seller may establish a trust account.

(B) All money deposited in an escrow or trust account, except for money distributed for purposes of Rule 5.3(C)(2) and (3), must be held in the account until a manufactured home is delivered or the sale is terminated, including a complete accounting of all money.

(C) The Division of Housing will conduct an audit of each seller's escrow or trust account at least once every two years.

5.4 Pursuant to sections 24-32-3301(c)(II) and 24-32-3324(2), C.R.S., a seller is also required to establish and maintain a letter of credit, certificate of deposit issued by a licensed financial institution, or a surety bond issued by an authorized insurer in order to obtain and keep their registration in active status for that year as follows:

(A) A minimum coverage amount of $50,000 for their annual registration period to cover all down payments received by the seller from any purchasers prior to the delivery of manufactured homes during that registration period.

(B) If a seller collects more than $50,000 in down payments from purchasers during their registration period, then the seller must at that point obtain coverage that is equal to or greater than all down payments received by the seller from all purchasers.

(C) The following transactions are not subject to the coverage requirements of (B) in this rule:

(1) Any down payments that are deposited in a Division-approved escrow or trust account;

(2) Any portion of the down payments distributed within 30 days for specific services that are detailed in the contract between the purchaser and the seller and are clearly invoiced for, or sent to the manufacturer to construct the manufactured home; or

(3) Any nominal sales promotion amount billed to potential purchasers for the primary purpose of holding a pricing level on the manufactured home.

5.5 A registration may have more than one location under a parent company in which case they all must be under the same registration and covered by the same letter of credit, certificate of deposit, or surety bond. The business name on the registration and the business name on the letter of credit, certificate of deposit, or surety bond must match.

5.6 Once a complete application is received by the Division of Housing, the date of registration issued will be the same as the dates on the letter of credit, certificate of deposit, or surety bond. They should all be dated on the first day of the month.

5.7 All letters of credit, certificate of deposits, or surety bonds must include language that the Division of Housing be listed on the financial security device and may be drawn upon by the Division of Housing after an enforcement action as described in section 24-32-3324, C.R.S.

Renewal

5.8 A registration is active for one (year) from the date of issuance and a registered seller will be notified a reminder to renew thirty (30) calendar days in advance of the expiration date of their registration.

5.9 A new application, new letter of credit, certificate of deposit, or surety bond is required to be submitted for the renewed year.

Sales Contract

5.10 In addition to the requirements provided in section 24-32-3325, C.R.S., a seller:

(A) Is not required to return any portion of down payment(s) made prior to the delivery of the manufactured home if that money was used for specific services detailed in the contract or sent to the factory to cover its construction costs if this is clearly provided in the executed sales contract between seller and purchaser.

(B) May collect additional amounts from a purchaser if the purchaser cancels an approved order if deposits were sent to the factory that are not adequate to cover purchased materials and expenses associated with pre-construction activity for the manufacturer and seller if clearly outlined in the contract.

5.11 A seller is required to retain true copies of all sales contracts, down payment receipts, depository receipts, evidence of delivery documents, and evidence the sale was finalized or terminated for a period of three years.

5.12: A seller is required to inform the buyer of a manufactured home or a tiny home, to be installed on a permanent or temporary foundation in an area of the state without a local building department, that the foundation must be designed by a Colorado licensed design professional. Plans are to be submitted to the Division of Housing for review and approval, and construction is to be inspected and approved by the Division of Housing. This notification may be inserted in the contract, or as an attachment or amendment to the contract, or separate from the contract as long as the homeowner signature is obtained.

Rule 6. Installations of Manufactured Homes and Tiny Homes

6.1 Every manufactured home, as defined by sections 24-32-3302(20), C.R.S., to include a “multi-family structure” as defined in Rule 1.17, or a tiny home as defined by section 24-32-3302(35), C.R.S., that is installed at a temporary or permanent location and is designed and commonly used for occupancy by persons for residential purposes, must display a certificate of installation (insignia) issued by the Division of Housing or an authorized party, certifying that the unit is installed in compliance with the manufacturer’s instructions or the Manufactured Housing Installation Standards adopted by the Division in rules 2.12 through 2.15.

6.1.1 Temporary installations for the purpose of home display prior to use as a residence which will be relocated to another location are exempted from these rules provided these installations are for display use only with no type of occupancy.

6.1.2 Except where specifically excluded from Rule 6, all installation standards apply to manufactured homes and tiny homes.

6.2 Prior to beginning the installation of a manufactured home or tiny home, the owner (authorized to install their own home subject to the requirements and limitations of section 24-32-3315(1)(c), C.R.S.) or registered installer who is installing a manufactured home or tiny home must submit a complete and accurate application for an Installation Authorization issued by the Division or certified installation inspector, unless a participating jurisdiction is inspecting and certifying the installation.

6.2.1 Owners or registered installers must display an Installation Authorization at the site of the manufactured home or tiny home, located in any jurisdiction outside the authority of a

"participating jurisdiction" as defined in Rule 1.17, to be installed until an installation certification is attached to the manufactured home or tiny home certifying that the installation is in compliance with the manufacturer's installation instructions or the installation standards in rules 2.12 through 2.15 of these rules.

6.2.2 Each authorization for installation will contain the identity of the installer and owner as well as phone number and contact person, and identify the installer as the home owner, or a registered or certified installer. The certificate will also include the name, address, and telephone number of the individual or agency issuing the Installation Authorization.

6.2.3 Owners or registered installers installing a home in a jurisdiction of the state where there is not a local building department must install the home on a foundation that has been designed and stamped by a Colorado licensed design professional and the foundation inspected by the Division of Housing.

6.3 A copy of the manufacturer's instructions must be available at the time of installation and inspection of each new manufactured home or tiny home. The installer is responsible to maintain a copy of the manufacturer's instructions at the installation site.

6.3.1 Whenever the applicable standard (manufacturer's instructions, NFPA 225, etc.) for the installation of the manufactured home or tiny home is not present at the time of the inspection, the inspector may fail the inspection and require a re-inspection of the installation. All costs of the inspection and any following re-inspection will be borne by the installer.

6.3.2 Where the manufactured home or tiny home is used or is being relocated, the manufacturer's instructions will be used if available. If the manufacturer's instructions are not available, the applicable adopted alternate standard listed in rules 2.12 through 2.15 of these rules will be used for the installation.

6.4 All manufactured homes or tiny homes that are found to be in compliance with installation requirements must have a certification of installation (copper colored 3"x5" insignia for modular and tiny homes or gold colored 3"x5" for multi-family) completed and permanently attached by the inspector making the inspection or a certified installer.

6.4.1 A certification of installation must be affixed at the interior electrical panel or under the sink cabinet.

6.4.2 Application of the certification of installation is evidence that permanent utility service may be established.

6.5 When a manufactured home or tiny home installation is not found in compliance with the applicable manufacturer's instructions or other applicable standard or approved plans, the installer or manufacturer must be notified in writing by the inspector.

6.5.1 Determination of the responsible party must be to the best of the inspector's knowledge. Documentation must be provided to the inspector for changing a responsible party.

6.5.2 The inspector may, at the time of the inspection, include in the inspection report instructions for the installer to call for re-inspection at any stage to prevent cover up of any part of the installation requiring re-inspection by the inspector.

6.6 The installer must pay for any repairs required to bring the installation into compliance. The installer will pay for any subsequent inspections required by the Division or certified inspector.

6.7 If a vacant manufactured home or tiny home fails the installation inspection because of conditions that endanger the health or safety of the occupant, the manufactured home or tiny home cannot be occupied. The unsafe manufactured home or tiny home will be visibly posted with a "Red Tag Notice" to prevent occupancy.

6.8 If an installation or subsequent repair of an installation by an installer fails to meet the instructions or standards within the time limit allowed by the inspector, the inspector must notify the installer of the specific violation(s). All installers must correct any installation violations within thirty (30) calendar days of inspection or be subject to the issuance of a "Red Tag Notice".

6.9 An installer cannot reduce or eliminate their responsibility to perform an "installation" as defined pursuant to section 24-32-3302(16), C.R.S., including without limitation supporting, blocking, leveling, securing, or anchoring a manufactured home on a permanent or temporary foundation system, and connecting multiple or expandable sections of the home.

Registration

6.10 Pursuant to sections 24-32-3302(16), 24-32-3302(17), 24-32-3302(31), 24-32-3303(1)(d), 24-32-3304(1)(d), 24-32-3305(1)(c), 24-32-3315, 24-32-3317(3), 24-32-3319, and 24-32-3320, C.R.S., a person must be actively registered with the Division of Housing before attempting to install a manufactured home or tiny home regardless of whether they are paid for such service, unless exempted from registration requirements pursuant to section 24-32-3315(1)(b) or (c), C.R.S.

6.10.1 Those that are exempted from registration requirements in statute are still required to comply with all provisions of this rule as well as the installation standards provided in rules 2.12 through 2.15 of these rules.

6.11 In order to be eligible for registration, an application meeting the requirements outlined in sections 24-32-3315(2), (3), and (4), C.R.S., must be filed with the Division of Housing, including the following:

6.11.1 Experience; training; education; liability insurance; and letter of credit, certificate of deposit, or bond requirements pursuant to sections 24-32-3315(2), 24-32-3315(4)(b), 24-32-3315(4)(b.5), and 24-32-3315(4)(c), C.R.S., include the following:

6.11.1.1 An individual applying to be a registered installer for one- and two-family dwellings that are factory-built residential structures constructed to the International Residential Code (IRC) as adopted by the State Housing Board (modular homes) and tiny homes must meet the following requirements in addition to what is provided in section 24-32-3315(4), C.R.S.:

(A) 12-months of installation experience under direct supervision of a registered or certified installer, which includes a minimum of 1,800 hours of experience installing at least five modular homes, including supporting, blocking, leveling, securing, anchoring, and connecting multiple or expandable sections of the home.

OR

(B) 3,600 hours of experience in the construction of modular homes;

(C) 3,600 hours of experience as a building construction supervisor;

(D) 1,800 hours as an active modular home installation inspector;

(E) Completion of one year of a college program in a construction-related field; or

(F) Any combination of experience or education from paragraphs (B) through (E) of this rule that totals 3,600 hours;

OR

(G) Residential Contractor Class C for the installation of residential buildings regulated by the International Residential Code (IRC), limited to the height of not greater than three stories above grade and to include buildings listed in Section 101.2 of the IRC.

AND

(H) Eight hours of Division-approved installation education: four of the hours must consist of training on modular IRC installation standards which may include tiny home installation standards, and the other four hours on the Division of Housing's Manufactured Housing Installation Program.

AND

(I) General liability insurance coverage with a minimum of $1,000,000 per occurrence.

AND

(J) A letter of credit, certificate of deposit issued by a licensed financial institution, or surety bond issued by an authorized insurer for $15,000 and is payable to the Division of Housing upon execution of an enforcement action.

6.11.1.2 An individual applying to be a registered installer for mobile homes and manufactured homes constructed to the federal standards (HUD-code homes) must meet the following requirements in addition to what is provided in section 24-32-3315(4), C.R.S.:

(A) 12-months of installation experience under direct supervision of a registered or certified installer, which includes a minimum of 1,800 hours of experience installing at least five manufactured homes, including supporting, blocking, leveling, securing, anchoring, and connecting multiple or expandable sections of the home.

OR

(B) 3,600 hours of experience in the construction of manufactured homes;

(C) 3,600 hours of experience as a building construction supervisor;

(D) 1,800 hours as an active manufactured home installation inspector;

(E) Completion of one year of a college program in a construction-related field; or

(F) Any combination of experience or education from paragraphs (B) through (E) of this rule that totals 3,600 hours;

OR

(G) Certified or licensed to perform manufactured home installations in a state with a qualifying installation program if that state's requirements are substantially equivalent to Colorado's.

AND

(H) Eight hours of Division-approved installation education: four of the hours must consist of training on the federal installation standards, part 3285, and the other four hours on the Division of Housing's Manufactured Housing Installation Program.

AND

(I) General liability insurance coverage with a minimum of $1,000,000 per occurrence.

AND

(J) A letter of credit, certificate of deposit issued by a licensed financial institution, or surety bond issued by an authorized insurer for $15,000 and is payable to the Division of Housing upon execution of an enforcement action.

6.11.1.3 An individual applying to be a registered installer of multi-family structures as defined by Rule 1.17 must meet the following requirements in addition to what is provided in section 24-32-3315(4), C.R.S.:

(A) 12-months of installation experience under direct supervision of a registered or certified installer, which includes a minimum of 1,800 hours of experience installing multi-family structures, including supporting, blocking, leveling, securing, anchoring, and connecting multiple or expandable sections of the structure.

OR

(B) Building Contractor B for the installation of commercial buildings regulated by the International Building Code (IBC), not considered high rise.

(C) Building Contractor A for the installation of commercial buildings regulated by the International Building Code (IBC), considered high rise.

(D) Colorado Registered Design Professional who has prior experience in the design and construction of multi-family structures.

AND

(E) Eight hours of Division-approved installation education: four of the hours must consist of training on the installation of multi-family structures and the other four hours on the Division of Housing's Manufactured Housing Installation Program.

AND

(F) General liability insurance coverage with a minimum of $1,000,000 per occurrence.

(H) A letter of credit, certificate of deposit issued by a licensed financial institution, or surety bond issued by an authorized insurer for $15,000 and is payable to the Division of Housing upon execution of an enforcement action.

Certification

6.12 Pursuant to sections 24-32-3302(4), 24-32-3315(7)(a), and 24-32-3317(2), C.R.S., a registered installer may apply to the Division of Housing for certification under one of the three following classifications or all three if qualified to do so:

6.12.1 Class IRC – Modular and tiny home only. Submit evidence of five (5) Division-approved installations of manufactured homes and tiny homes built to the building codes adopted by the State Housing Board, completed within an 18-month period.

6.12.2 Class HUD – HUD-code and mobile homes only. Submit evidence of five (5) Division-approved installations of manufactured homes built to the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., and any standard promulgated by the Secretary of the U.S. Department of Housing and Urban Development (HUD) pursuant to the federal act; completed within an 18-month period.

6.12.3 Class IBC – Multi-family structures. Submit evidence of five (5) Division-approved installations of multi-family structures built to the building codes adopted by the State Housing Board, completed within an 18-month period.

6.13 Evidence of installation must include copies of all inspection reports for each installation issued by the Division of Housing or a certified installation inspector. If in the judgment of the Division, such installer has demonstrated the ability to successfully complete installations of manufactured homes, tiny homes, or multi-family structures in accordance with the requirements of the specific classification they have applied, a certification inspection will be scheduled. Certification will be granted at that classification if the installation is approved.

6.13.1 If the review of the evidence of the installations does not clearly demonstrate the ability to successfully complete installations in compliance with the requirements, the Division may require additional installations to be performed, reviewed, and accepted prior to scheduling a certification inspection.

6.14 A certified installer is authorized by section 24-32-3317(2.3), C.R.S., to independently certify the installation by affixing a certificate of installation (insignia) authorized by the Division after the installation is completed in compliance with all requirements in any county or municipality that is not covered by a participating jurisdiction. Pursuant to section 24-32-3317(2.5), C.R.S., a

participating jurisdiction authorizes, inspects, and certifies all installations occurring within its jurisdiction, even those to be performed by a certified installer.

6.14.1 The certified installer must then report that they certified the installation to the Division.

6.14.2 Installations performed by a certified installer do not require an inspection by the Division or a certified inspector. However, pursuant to sections 24-32-3317(2.9) and 24-3317(6), C.R.S., one of the parties identified may request the Division of Housing to inspect an installation performed by a certified installer.

Renewal

6.15 A registered installer is required to timely renew their registration once a year and in compliance with the requirements of section 24-32-3315, C.R.S., in order to continue performing installations in the state of Colorado.

6.15.1 A renewal application filed with the Division of Housing must include evidence of completing four hours of approved continuing education in compliance with the education requirements listed further down in these rules.

6.16 A certified installer must timely and completely renew their registration with the Division of Housing as required above in Rule 6.15 in order to maintain their certification. A certification will automatically expire if a registration is not successfully renewed.

Education

6.17 The Division of Housing will review all educational courses submitted and will grant course approval in writing. The Division of Housing may audit courses and may request from each entity offering a Division-approved course, all instructional material and attendance records as may be necessary for an investigation. Failure to comply may result in the withdrawal of Division approval of the course.

6.18 All continuing education courses must contain at the minimum the following instructional material:

(A) Blueprint reading and comprehension.

(B) Discussion of structural issues. For example: hinged roofs, cape cod roofs, marriage line fastening and support, foundation sizing, etc.

(C) A review of Colorado law, rules and/or policies as they pertain to the technical issues being discussed at the training.

6.19 All continuing education courses may be offered and completed by distance learning.

6.20 The following course format and administrative requirements apply to all Colorado continuing installation education for installers and inspectors:

(A) Courses must be at least one hour in length and contain at least 50 instructional minutes per course hour.

(B) A maximum of eight-hours of credit may be earned per day.

(C) No course may be repeated for credit in the same registration period.

(D) Instructors may receive credit for classroom teaching hours once per course taught per year.

(E) A volunteer member of the State Housing Board's Technical Advisory Committee (TAC) may receive credit for participating in the process of recommending rule amendments/adoptions once per year.

(F) Hours in excess of the required amount may not be carried forward to satisfy a subsequent renewal requirement.

(G) No school/provider may waive, excuse completion of, or award partial credit for the full number of course hours.

6.21 Each Colorado installer or inspector is responsible for securing from the provider evidence of course completion in the form of an affidavit or certificate of attendance. Documentation must be in sufficient detail to show the name of the licensee, course subject, content, duration, date(s), and contain the authentication of the provider.

6.21.1 For distance learning an affidavit of completion signed under penalty of perjury is the only acceptable proof.

6.21.2 In person courses may have a certificate signed by the instructor at the end of the course.

6.21.3 Installers and inspectors must retain proof of continuing education completion for three years, and provide said proof to the Division upon request.

6.22 Each approved education provider must retain copies of course outlines or syllabi and complete attendance records for a period of three years.

6.23 Continuing education providers must submit an application form along with the following information at least 30-days prior to the proposed class dates:

(A) Detailed course outline or syllabus, including the intended learning outcomes, the course objectives, and the approximate time allocated for each topic.

(B) A copy of the course exam(s) and instructor answer sheet if applicable. In the absence of an exam, the criteria used in evaluating a person's successful completion of the course objectives.

(C) Copy of instructor teaching credential; if none, a resume showing education and experience which evidence the mastery of the material to be presented.

(D) A copy of advertising or promotional material used to announce the offering.

(E) Upon Division request, a copy of textbook, manual, audio, videotapes, or other instructional materials.

6.24 By offering installation continuing education in Colorado, each provider agrees to comply with relevant statutes and rules and to permit the Division of Housing to audit courses at any time and at no cost.

Inspectors

6.25 Pursuant to sections 24-32-3302(15), 24-32-3315(7)(b), 24-32-3317(2), 24-32-3317(5)(a), 24-32-3317(6), 24-32-3317(7), 24-32-3317(8), 24-32-3317(9), and 24-32-3322, C.R.S., the Division may authorize independent contractors to perform installation inspections and enforcement of proper installation of manufactured homes and tiny homes.

6.26 Pursuant to section 24-32-3317(8), C.R.S., the Division of Housing establishes the following qualifications and area of expertise necessary for inspecting manufactured homes and tiny homes as acceptable in addition to the qualifications and requirements already listed in the statute:

(A) Class IRC and HUD - when inspecting the installation of mobile, manufactured HUD-code homes, or IRC modular homes or tiny homes:

(1) Professional civil engineer – State of Colorado professional license in engineering;

(2) State of Colorado licensed architect;

(3) Local housing inspector – a manufactured home or tiny home or residential building inspector employed by the local authority having jurisdiction over the site of the home, provided it is a participating jurisdiction;

(4) International Code Council certified inspector;

(5) Previously a Colorado certified installer; or

(6) Class C contractor license for the installation of residential buildings regulated by the codes and standards of the IRC, limited to the height of not greater than three stories above grade and buildings classified R-2, R-3, and R-4 in section 101.2 of the IRC; and

(7) Twelve hours of Division-approved installation education: four of the hours must consist of training on the federal installation standards, part 3285; four of the hours must consist of training on modular IRC installation standards; and four hours on the Division of Housing's Manufactured Housing Installation Program.

OR

(B) Class IBC - when inspecting the installation of multi-family structures:

(1) Colorado Registered Design Professional who specializes in the field they are inspecting;

(2) Local housing inspector – a commercial or combination building inspector employed by the local authority having jurisdiction over the site of the home, provided it is a participating jurisdiction;

(3) International Code Council certified commercial ~~or~~ combination inspector;

(4) A Division of Housing approved third-party inspection agency;

(5) Class B Commercial Building Contractor License for the installation of commercial buildings regulated by the code and standards of the IBC not considered high rise construction; or

(6) Class A Commercial Building Contractor License for the installation of commercial buildings regulated by the code and standards of the IBC considered high rise construction; and

(7) Twelve hours of Division-approved installation education: eight of the hours must consist of training on multi-family structure installation standards and four hours on the Division of Housing's Manufactured Housing Installation Program.

6.27 The Division of Housing may revoke the certification of any inspector who fails to maintain the minimum requirements for the certification, has a conflict of interest impairing their ability to make impartial inspections, or if investigation of complaints by the Division reveals that the inspector has repeatedly failed to enforce the requirements of these rules.

6.28 A certified inspector may not perform inspections where the inspector has a conflict of interest that may impair their ability to make fair and impartial inspections.

6.29 A certified inspector is required to renew their certification every three (3) years in compliance with section 24-32-3317(8), C.R.S.

6.29.1 A renewal application filed with the Division of Housing must include evidence of completing four hours of approved continuing education for each of the three years (total of 12 hours) in compliance with the education requirements listed further up in these rules.

6.30 Where a local jurisdiction has established a building department, the building official or other approved authority may make a written request to be the exclusive independent installation inspection agency within their legal boundaries as a "participating jurisdiction".

6.30.1 When granted by the Division of Housing, all manufactured home or tiny home installation inspections in that area will be made by that participating jurisdiction's certified installation inspectors or by a certified installation inspector approved by the jurisdiction.

6.30.2 Division inspectors or Division designated independent inspectors may perform inspections within the participating jurisdiction in response to a complaint.

Rule 7. Enforcement

This rule clarifies the enforcement actions available to the Division of Housing pursuant to sections 24-32-3307, 24-32-3308(1), 24-32-3311(a.3), 24-32-3313, 24-32-3315(5), 24-32-3315.5(2), 24-32-3317(2.9), 24-32-3317(3)(a), 24-32-3317(3)(b), 24-32-3317(9), 24-32-3320, 24-32-3324(2), 24-32-3325(3), or 24-32-3326(2), C.R.S..

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7.1 The Division of Housing may deny, suspend, fine, or revoke a registration or certification after notice and hearing pursuant to sections 24-4-104 & 24-4-105, C.R.S., whenever a violation of any provision of these regulations or statutes occurs, or when a registration or certification is issued on the basis of incorrect information supplied by the applicant.

7.1.1 A person or entity with a registration or certification that is revoked may not apply for a new registration or certification until at least one (1) year has passed from the date it went into effect and must comply with any remediation requirements imposed by the Division of Housing.

7.1.2 The Division may, in its discretion, seek the summary suspension of a registration or certification under § 24-4-104(4)(a), C.R.S., if the Division concludes that the registered or certified entity or individual has committed deliberate and willful violations of Colorado law or if the public health, safety, or welfare imperatively requires emergency action.

7.2 A certified inspector that knows of an installation that is in default and has not been corrected by subsequent repair must request that the Division investigate the installation. The Division may revoke, suspend, or fail to renew the registration of the installer and cause the forfeiture of the installer's surety bond on behalf of the owner of the manufactured home for failing to comply with the Division's standards regarding installation of a manufactured home.

7.3 The Division may investigate complaints filed against manufacturers, sellers, or installers as necessary to enforce and administer these regulations.

7.4 The Division may designate a certified inspector to perform inspections on behalf of the Division to aid in the investigation of consumer complaints.

7.5 In the event the Division of Housing receives funds from the forfeiture of a letter of credit, certificate of deposit, or surety bond, pursuant to (i) section 24-32-3315(2), C.R.S., or (ii) section 24-32-3324(2), C.R.S., the Division of Housing shall distribute those funds to the individual entitled to the funds pursuant to those statutes. If more than one person is eligible to make a claim, then the Division of Housing is required to pro rate the total amount of the letter of credit, certificate of deposit, or surety bond among all known claimants using the following formula:

Take the eligible amount paid by each verified claimant and divide it by the total dollar amount of eligible payments received by the registered installer or seller from all verified claimants, and multiply it by the amount recovered from the letter of credit, certificate of deposit, or surety bond to get the specific amount the claimant will receive of the total amount available to all claimants.

APPENDIX A

Table 6.2.3.1.3(a)

Single and Multi Section Pier Loads Without Perimeter blocking
(at both I beams, in Lbs)
See section 6.2.5.5 for required perimeter blocking at side wall openings
See Table 6.2.3.1.3(c) for piers required under marriage line openings

Roof snow load (PSF)	Section Width (feet)	Maximum pier spacing			
		4'	6'	8'	10'
30	10	2360	3390	4420	5450
	12	2704	3906	5108	6310
	14	3048	4422	5796	7170
	16	3392	4938	6484	8030
40	10	2600	3750	4900	6050
	12	2984	4326	5668	7010
	14	3368	4902	6436	7970
	16	3752	5478	7204	8930
60	10	3080	4470	5860	7250
	12	3544	5166	6788	8410
	14	4008	5862	7716	9570
	16	4472	6558	8644	10730
80	10	3560	5190	6820	8450
	12	4104	6006	7908	9810
	14	4648	6822	8996	11170
	16	5192	7638	10084	12530
100	10	4040	5910	7780	9650
	12	4664	6846	9028	11210
	14	5288	7782	10276	12770
	16	5912	8718	11524	14330

Notes:
1. See Table 6.3.3 for footing design using the noted loads
2. This Table is based on the following design assumptions:
   Nominal width is used, 12" eave, 20plf chassis dead load, 300 lbs. Pier dead load,
   35 plf wall dead load, 10psf roof dead load and 6 psf floor dead load
3. Interpolation for other pier spacing is permitted
4. These loadings are not for flood or seismic conditions.

Table 6.2.3.1.3(b)

Single and Multi Section Pier Loads With Perimeter blocking
(Lbs)
See section 6.2.5.5 for required perimeter blocking at side wall openings
See Table 6.2.3.1.3(c) for piers required under marriage line openings

		Frame				Exterior wall				Marriage wall			
Roof snow load (PSF)	Section Width (ft)	Maximum pier spacing				Maximum pier spacing				Maximum pier spacing			
		4'	6'	8'	10'	4'	6'	8'	10'	4'	6'	8'	10'
30	10	1400	1950	2500	3050	1400	1950	2500	3050	2480	3420	4360	5300
	12	1584	2226	2868	3510	1560	2190	2820	3450	2800	3900	5000	6100
	14	1768	2502	3236	3970	1720	2430	3140	3850	3120	4380	5640	6900
	16	1952	2778	3604	4430	1880	2670	3460	4250	3440	4860	6280	7700
40	10	1400	1950	2500	3050	1640	2310	2980	3650	2880	4020	5160	6300
	12	1584	2226	2868	3510	1840	2610	3380	4150	3280	4620	5960	7300
	14	1768	2502	3236	3970	2040	2910	3780	4650	3680	5220	6760	8300
	16	1952	2778	3604	4430	2240	3210	4180	5150	4080	5820	7560	9300
60	10	1400	1950	2500	3050	2120	3030	3940	4850	3680	5220	6760	8300
	12	1584	2226	2868	3510	2400	3450	4500	5550	4240	6060	7880	9700
	14	1768	2502	3236	3970	2680	3870	5060	6250	4800	6900	9000	11100
	16	1952	2778	3604	4430	2960	4290	5620	6950	5360	7740	10120	12500
80	10	1400	1950	2500	3050	2600	3750	4900	6050	4480	6420	8360	10300
	12	1584	2226	2868	3510	2960	4290	5620	6950	5200	7500	9800	12100
	14	1768	2502	3236	3970	3320	4830	6340	7850	5920	8580	11240	13900
	16	1952	2778	3604	4430	3680	5370	7060	8750	6640	9660	12680	15700
100	10	1400	1950	2500	3050	3080	4470	5860	7250	5280	7620	9960	12300
	12	1584	2226	2868	3510	3520	5130	6740	8350	6160	8940	11720	14500
	14	1768	2502	3236	3970	3960	5790	7620	9450	7040	10260	13480	16700
	16	1952	2778	3604	4430	4400	6450	8500	10550	7920	11580	15240	18900

Notes:
1. See Table 6.3.3 for footing design using the noted loads
2. This Table is based on the following design assumptions:
   Nominal width is used, 12" eave, 20plf chassis dead load, 300 lbs. Pier dead load,
   35 plf wall dead load, 10psf roof dead load and 6 psf floor dead load
3. Interpolation for other pier spacing is permitted
4. These loadings are not for flood or seismic conditions.

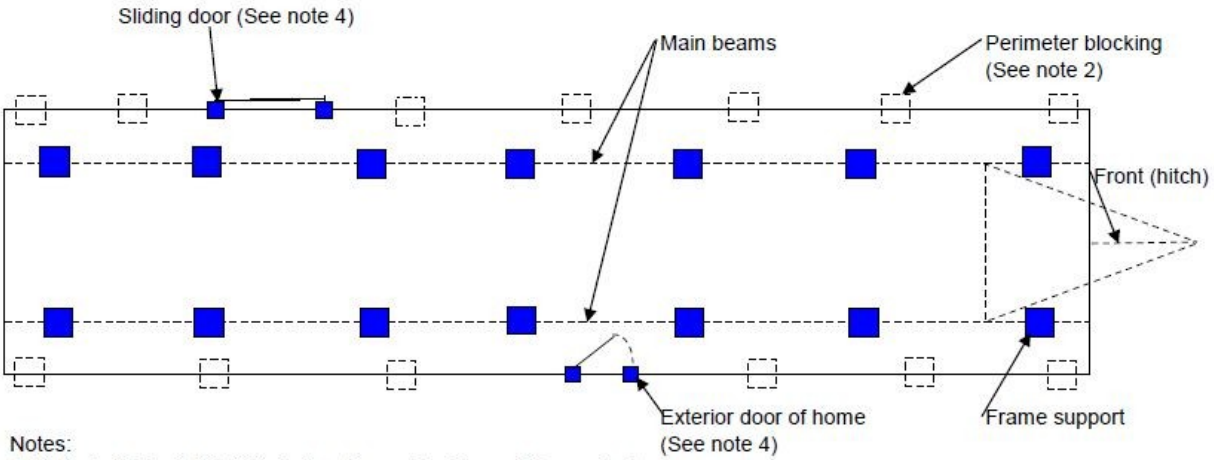
Table 6.2.3.1.3(c)

Multi Section Pier Loads Under Marriage Line Openings
(Under each end of opening in Lbs)
See section 6.2.5.5 for required perimeter blocking at side wall openings

Roof snow load (PSF)	Section Width (ft)	Marriage wall opening width									
		5'	8'	10'	12'	14'	16'	18'	20'	25'	30'
30	10	1300	1900	2300	2700	3100	3500	3900	4300	5300	6300
	12	1500	2220	2700	3180	3660	4140	4620	5100	6300	7500
	14	1700	2540	3100	3660	4220	4780	5340	5900	7300	8700
	16	1900	2860	3500	4140	4780	5420	6060	6700	8300	9900
40	10	1550	2300	2800	3300	3800	4300	4800	5300	6550	7800
	12	1800	2700	3300	3900	4500	5100	5700	6300	7800	9300
	14	2050	3100	3800	4500	5200	5900	6600	7300	9050	10800
	16	2300	3500	4300	5100	5900	6700	7500	8300	10300	12300
60	10	2050	3100	3800	4500	5200	5900	6600	7300	9050	10800
	12	2400	3660	4500	5340	6180	7020	7860	8700	10800	12900
	14	2750	4220	5200	6180	7160	8140	9120	10100	12550	15000
	16	3100	4780	5900	7020	8140	9260	10380	11500	14300	17100
80	10	2550	3900	4800	5700	6600	7500	8400	9300	11550	13800
	12	3000	4620	5700	6780	7860	8940	10020	11100	13800	16500
	14	3450	5340	6600	7860	9120	10380	11640	12900	16050	19200
	16	3900	6060	7500	8940	10380	11820	13260	14700	18300	21900
100	10	3050	4700	5800	6900	8000	9100	10200	11300	14050	16800
	12	3600	5580	6900	8220	9540	10860	12180	13500	16800	20100
	14	4150	6460	8000	9540	11080	12620	14160	15700	19550	23400
	16	4700	7340	9100	10860	12620	14380	16140	17900	22300	26700

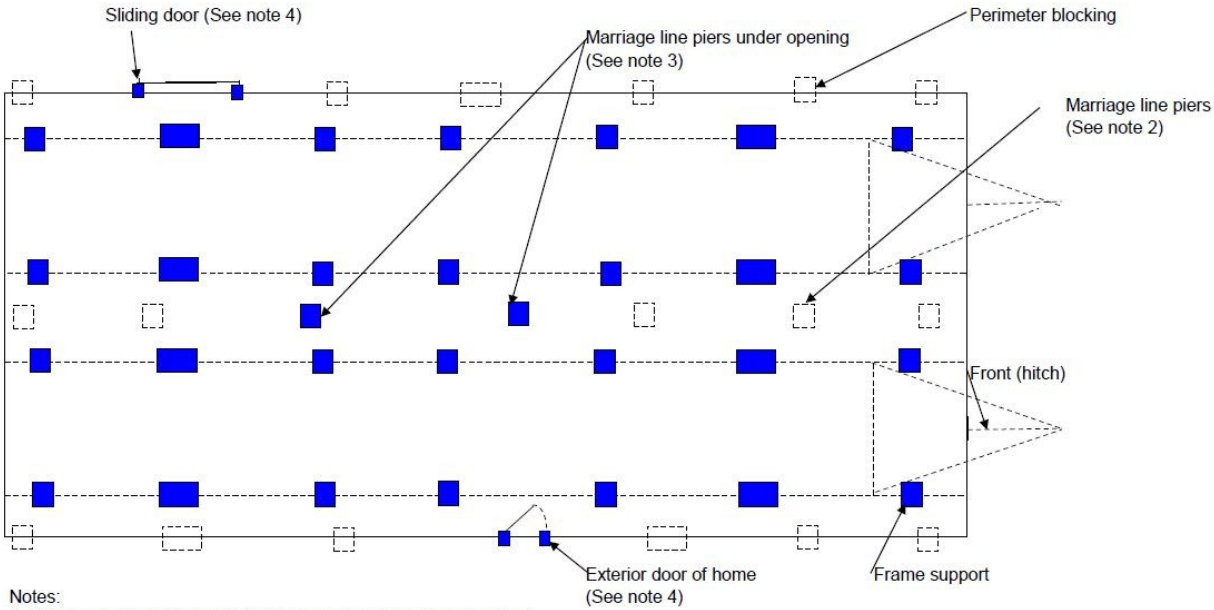
Notes:
1. See Table 6.3.3 for footing design using the noted loads
2. This Table is based on the following design assumptions:
   Nominal width is used, 300 lbs. Pier dead load,
   10psf roof dead load
3. Interpolation for other pier spacing is permitted
4. For piers supporting two adjacent openings, the required capacity is the sum of the loading from each opening.
5. These loadings are not for flood or seismic conditions.

FIGURE 6.2.5.3 Typical Blocking Diagram for a Single Section



Notes:
1. Refer to Table 6.2.3.1.3(a) when frame blocking only is required.
2. Refer to Table 6.2.3.1.3(b) when perimeter blocking is required.
3. Locate piers a maximum of 24 inches from both ends.
4. **All homes:** Place piers on both sides of sidewall exterior doors, patio doors, and sliding glass doors: under porch posts, factory-installed fireplaces, and fireplace stoves; under jamb studs at multiple window openings; and at any other sidewall openings 48 inches or greater in width.

FIGURE 6.2.5.4 Typical Blocking Diagram for a Multi-Section Home



Notes:
1. Refer to Table 6.2.3.1.3(a) when frame blocking only is required.
2. Refer to Table 6.2.3.1.3(b) when perimeter blocking is required.
3. Refer to Table 6.2.3.1.3(c) for piers under marriage line wall openings
4. Locate piers a maximum of 24 inches from both ends.
5. **All homes:** Place piers on both sides of sidewall exterior doors, patio doors, and sliding glass doors: under porch posts, factory-installed fireplaces, and fireplace stoves; under jamb studs at multiple window openings; and at any other sidewall openings 48 inches or greater in width.

Table 7.3 Connections of Multi-Box Home

Shim any gaps between structural elements prior to connection with dimensional lumber up to one inch. If gaps exceed one inch, re-position home to eliminate gapping condition.

CONNECTOR LOCATION	CONNECTOR SIZE	FASTENER ANGLE	FASTENER SPACING
Roof support beam at ridge or ceiling line	1/2 inch carraige bolts	90 degrees	48 inches on center
Roof ridge beam or ridge rail	3/8 inch lag screws with washers	Approx 45 degrees	24 inches on center each side and staggered
Roof rafter connection	4x12 inch 18 guage galv strap centered on truss and peak	90 degrees into truss	48 inches on center for straps, 5-10d nails each side of ridge
or	8 inch continuous 18 gauge galv metal sheet centered on peak	90 degrees into roof sheathing/beams/truss	8D nails at 6 inches on center each side of ridge
Floor rim joist connection	3/8 inch lag screws with washers	Approx 45 degrees	24 inches on center each side and staggered
End wall and interior wall connection	#8 wood screws	Approx 45 degrees	18 inches on center

Notes:

1. Fastener length shall be adjusted as required to obtain full penetration into all structural members being connected on both sides of the marriage line.

2. 3/8" lag screws are to be piloted with 1/4" dia. holes prior to installation.

3. When the support post for a roof support beam can only be located on one side of the marriage line, install eight 1/2" cluster bolts with washers, spaced 4" on center, centered on the post, to connect the roof support beams together.

Table 7.5.3.2.1 **Number and Location of Ground Anchors**

Section Floor Width	Main I-Beam spacing (in)	Max height from ground to strap attachment (in)	Anchor Spacing (ft)		Angle
10 ft 20 ft double wide	82.5	25	9		59 1/2
		33	12	FAR BEAM	18 1/2
		46	12	FAR BEAM	25 1/2
		67	11 1/2	FAR BEAM	34 1/2
	99.5	25	12	FAR BEAM	13 1/2
		33	12	FAR BEAM	17 1/2
		46	12	FAR BEAM	23 1/2
		67	11 1/2	FAR BEAM	32 1/2
12 ft 24 ft double wide	82.5	25	12		43
		33	10 1/2		51
		46	7 1/2		60
		67	11 1/2	FAR BEAM	31 1/2
	99.5	25	10		54
		33	12	FAR BEAM	15 1/2
		46	12	FAR BEAM	21 1/2
		67	11 1/2	FAR BEAM	29 1/2
14 ft 28 ft double wide	82.5	25	12		33
		33	12		40 1/2
		46	9 1/2		50
		67	6 1/2		60
	99.5	25	12		39 1/2
		33	11		47 1/2
		46	8		56 1/2
		67	11 1/2	FAR BEAM	27 1/2
16 ft 32 ft double wide	82.5	25	N/A		26
		33	12		33
		46	10 1/2		42
		67	8		53
	99.5	25	12		30 1/2
		33	12 1/2		38
		46	10		47 1/2
		67	7		58

Notes:
1. See Figures 7.5.3.2.1(a) and (b).
2. This Table is based on the following design assumptions:
   8' wall height, 4/12 roof pitch, 4 inch anchor inset from home edge, 12' max anchor spacing
3. Main beam spacing outside those shown may be used provided the inside strap angle from the ground to the strap is less than the angle shown and is between 30 and 60 degrees or connection is provided to both the near and far beam.Choose spacing from values shown.
4. FAR BEAM. Spacings shown with FAR BEAM require connection to **both** the near and far beam. This also applies to other main I beam spacing. See note 3.
5. Anchors must have a 3150 lbs working load capacity and be installed within 2' of each end of the home.
6. These spacings are not for flood or seismic conditions.

FIGURE 7.5.3.2.1(a) Anchor spacing and location

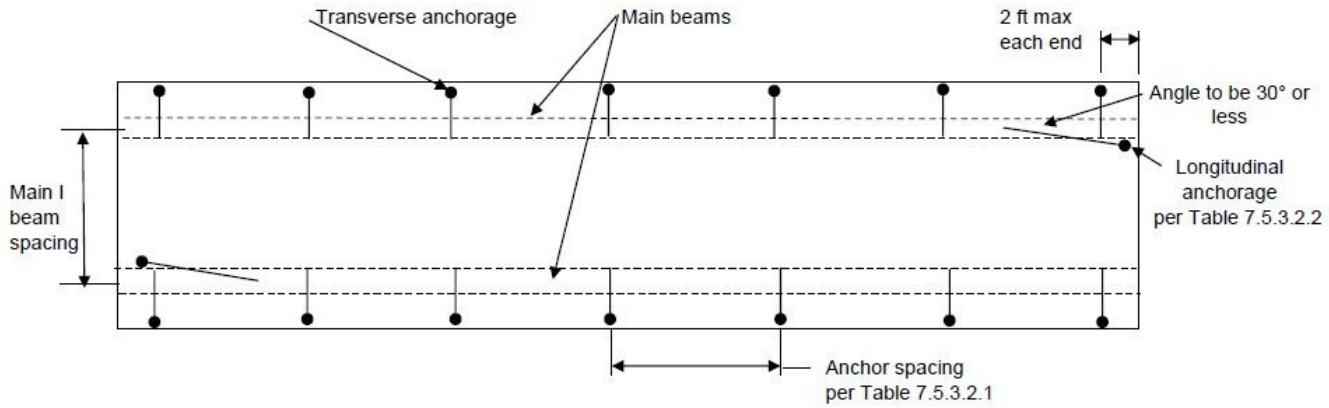
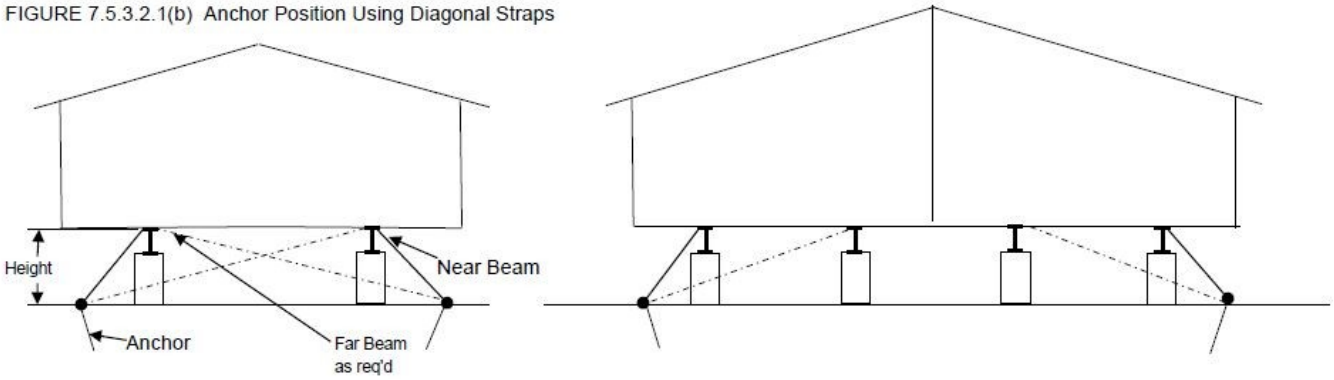


FIGURE 7.5.3.2.1(b) Anchor Position Using Diagonal Straps



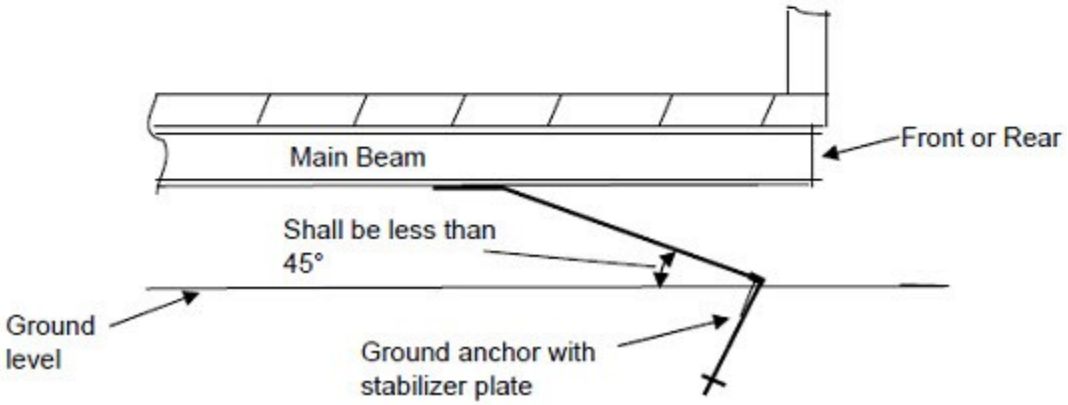
SINGLE WIDE DOUBLE WIDE

Table 7.5.3.2.2 Longitudinal Anchorage

NUMBER OF STRAPS REQUIRED AT EACH END OF THE HOME				
Number of Sections	Max Section Width (feet)			
	10	12	14	16
SINGLE WIDE	1	1	1	1
DOUBLE WIDE[1]	2	2	2	3

Footnote[1] Number of anchors may be reduced by 1 for homes greater than 60 feet in length

Notes: 1. Longitundal straps shall be attached to the home's main frame as specified by the maunfacturers installation instructions.



APPENDIX B

DEGREE DAYS AND DESIGN TEMPERATURES FOR COLORADO CITIES AND TOWNS

Location		Heating Degree Days	Design Temperatures°F Winter 97½%	Summer DB 2½%	Summer WB 2½%	Elevation (feet) above sea
1	Alamosa	8749	16	82	61	7546
2	Aspen	9922	1	81	59	7928
3	Boulder	5554	2*	91	63	5385
4	Buena Vista	8003	1	83	58	7954
5	Burlington	6320	2	95	70	4165
6	Canon City	4987	8	90	64	5343
7	Cheyenne Wells	5925	1	97	70	4250
8	Colorado Springs	6415	2	88	62	6012
9	Cortez	6667	5	88	63	6177
10	Craig	8403	14	86	61	6280
11	Creede	11375	-18	80	58	8842
12	Del Norte	7980	-4	81	60	7884
13	Delta	5927	6	95	62	4961
14	Denver	6020	1	91	63	5283
15	Dillon	11218	-16	77	58	9065
16	Dove Creek	7401	-6	86	63	6843
17	Durango	6911	4	87	63	6550
18	Eagle	8106	-11	87	62	6600
19	Estes Park	7944	-7	79	58	7525

HDD data taken from Department of Energy (Rescheck 4.4.2), Climate Data published by Rocky Mountain Chapter ASHRAE, First Edition-Centennial 1976, 1985 ASHRAE Fundamentals Handbook (See 2012 IPC appendix D).

Degrees North Latitude may be obtained at www.ncdc.noaa.gov

* Per Local. 8° per 1985 ASHRAE

DEGREE DAYS AND DESIGN TEMPERATURES FOR COLORADO CITIES AND TOWNS

Location		Heating Degree Days	Design Temperatures°F Winter	Summer		Elevation (feet)
			97½%	DB 2½%	WB 2½%	above sea
20	Ft. Collins	6368	-4	91	63	5001
21	Ft. Morgan	6460	-5	92	65	4321
22	Fraser	9777	-22	76	58	8560
23	Glenwood Springs	7313	5	91	63	5823
24	Granby	9316	-	---	---	7935
25	Grand Junction	5548	7	94	63	4586
26	Greeley	6306	-5	94	64	4648
27	Gunnison	10516	-17	83	59	7664
28	Holyoke	6583	-2	97	69	3746
29	Idaho Springs	8094	0	81	59	7555
30	Julesburg	6447	-3	98	69	3469
31	Kit Carson	6372	-1	98	68	4284
32	Kremmling	10095	-19	85	59	7359
33	La Junta	5263	3	98	70	4066
34	Lamar	5414	0	98	71	3635
35	Last Chance	------	-2	92	65	4790
36	Leadville	11500	-14	81	55	10,152
37	Limon	6961	0	91	65	5366
38	Longmont	6443	-2	91	64	4950
39	Meeker	8658	-6	87	61	6347
40	Montrose	6393	7	91	61	5830
41	Ouray	7639	7	83	59	4695

HDD data taken from Department of Energy (Rescheck 4.4.2), Climate Data published by Rocky Mountain Chapter ASHRAE, First Edition-Centennial 1976, 1985 ASHRAE Fundamentals Handbook (See 2012 IPC appendix D).

Degrees North Latitude may be obtained at www.ncdc.noaa.gov

DEGREE DAYS AND DESIGN TEMPERATURES FOR COLORADO CITIES AND TOWNS

Location		Heating Degree Days	Design Temperatures°F Winter	Summer		Elevation (feet)
			97½%	DB 2½%	WB 2½%	above sea
42	Pagosa Springs	8548	-9	85	61	7079
43	Pubelo	5413	0	95	66	4695
44	Rangely	7328	-8	93	62	5250
45	Rifle	6881	0	92	63	5345
46	Saguache	8781	-3	82	61	7697
47	Salida	7355	-3	84	59	7050
48	San Luis	8759	-10	84	60	7990
49	Silverton	11064	-13	77	56	9322
50	Springfield	5167	3	95	71	4410
51	Streamboat Springs	9779	-16	84	61	6770
52	Sterling	6541	-2	93	66	3939
53	Trinidad	5339	3	91	65	6025
54	Uravan	------	8	97	63	5010
55	Vail	9248	-14	78	59	8150
56	Walden	10378	-17	79	58	8099
57	Walsenburg	5438	1	90	63	6220
58	Wray	6160	-1	95	69	3560
59	Yuma	5890	-2	95	69	4125

HDD data taken from Department of Energy (Rescheck 4.4.2), Climate Data published by Rocky Mountain Chapter ASHRAE, First Edition-Centennial 1976, 1985 ASHRAE Fundamentals Handbook (See 2012 IPC appendix D).

Degrees North Latitude may be obtained at www.ncdc.noaa.gov

Resolutions 10, 34, 35, 36, and 38 repealed and replaced with this new rule, adopted on May 8, 2018, and effective July 1, 2018.

Rule 1.23 was created; Rules 1.24 and 1.25 were renumbered; Rules 2.1 and 2.1.1.1 were amended; Rules 2.2, 2.2.1, and 2.2.2 were amended; Rules 2.2.25, 2.2.26, and 2.2.27 were created; Rule 2.4 was amended; Rules 2.5 and 2.5.2 were amended; Rule 2.6 was amended; Rules 2.7.1, 2.7.4, and 2.7.7 were amended; Rule 4.1 was amended; Rule 4.21 was amended; Rule 4.23 was amended; and Rule 4.24 was amended. These changes were adopted on October 8, 2019, and are effective November 30, 2019.

Rule 7.3 was amended; Rule 7.5 was repealed and subsequent rules renumbered, and Rule 7.7 was created. These changes were adopted on July 14, 2020, and are effective September 14, 2020.

Rules 1.13, 7.1, and 7.2 were deleted. Rules 1.6, 1.9, 2.5.3., 5.8, 5.9, 6.11.1, 6.12.3, 6.15.1, 6.26(B), and 6.29.1 are new. Rules 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.11.1, 1.11.2, 1.12, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25. 1.26, 1.26.1, 1.26.2, 7.3, 7.4, 7.5, 7.6, and 7.7 were re-numbered. Rules 1.1, 1.4, 1.5.2, 1.9, 1.12.1, 1.15, 1.17, 1.18, 1.21, 1.25, 1.26.2(C), 2, 2.1.1.1, 2.5, 2.12, 3.1.3, 3.7, 4.1, 4.14, 4.15.1, 5, 5.1, 5.1.1, 5.1.2, 5.2, 5.3, 5.3(A), 5.3(B), 5.3(C), 5.4, 5.6, 6.1, 6.2, 6.2.1, 6.2.2, 6.3, 6.3.2, 6.5, 6.9, 6.10, 6.10.1, 6.11, 6.12, 6.12.1, 6.12.2, 6.13, 6.14, 6.14.1, 6.14.2, 6.15, 6.16, 6.26(A), 6.27, 6.28, 6.29, 7.1, 7.1.1, 7.1.2, and 7.5 were amended. These changes were adopted on July 13, 2021, and are effective August 30, 2021.

Title and subtitles changed to incorporate HB22-1242 modifications. Deleted Rules 2.5.1.1.(A). 7.7.2 Added Rules 1.4, 1.11, 1.19, 1.26, 1.31, 1.32, 1.33, 2.2.13, 3.1.6, 3.6.2(B), 3.6.2(C), 3.6.5(C), 3.6.5(D),

4.5, 4.5.1, 4.5.2, 4.5.2(1), 4.5.2(2), 4.6, 4.12.1, 4.12.2, 4.12.3, 4.12.4, 4.12.5, 4.12.6, 4.12.6.1, 4.15.1, 4.15.2, 4.15.3, 4.17.3, 4.17.4, 4.17.5, 4.24, 4.25, 4.27.5, 4.27.6, 5.2, 5.7, 5.12, 5.12.1, 6.1.2, 6.2.3, 7.1.2. Amended Rules: 1.2, 1.6.2, 1.6.3, 1.8, 1.10, 1.13, 1.13.1, 1.13.2, 1.15, 1.18, 1.20, 1.22, 1.27, 1.29, 2.1.9, 2.2.1, 2.2.11, 2.2.12, 2.2.17, 2.2.27, 2.12, 2.13.1.1, 2.14.1, 2.14.2, 2.14.2.1.1, 2.14.2.2, 3.1, 3.85, 4.2, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.14.1, 4.15, 4.16, 4.17.1.1, 4.17.2, 4.21, 4.22, 4.26, 4.26.1.1, 4.26.1.2, 4.26.1.3, 4.27.2, 4.27.3, 4.28, 4.32.1, 4.32.3, 4.32.4, 4.32.5, 4.32.8, 4.32.9, 5.1.1, 5.3, 5.4, 5.10, 6.1, 6.2, 6.2.1, 6.3, 6.3.1, 6.3.2, 6.4, 6.6, 6.7, 6.10, 6.11.1.1, 6.11.1.2, 6.12.1, 6.13, 6.25, 6.26, 6.30.1, 7.2, 7.5. The following rules were renumbered 1.4, 1.5, 1.6, 1.6.1, 1.8, 1.12, 1.13, 1.15, 1.20, 1.24, 1.26, 1.26.1, 1.26.2(A), 1.26.2(B), 1.25.2(C), 2.2.13, 2.2.14, 2.2.15, 2.2.16, 2.2.17, 2.2.18, 2.2.19, 2.2.20, 2.2.21, 2.2.22, 2.2.23, 2.2.24, 2.2.25, 2.2.26, 2.2.27C4.11.2, 4.14, 4.14.1, 4.15, 4.16, 4.16.1, 4.16.1.1, 4.17, 4.19.1, 4.20, 4.21.1, 4.21.3.1, 4.21.2.1, 4.21.2.2, 4.21.2.3, 4.21.2.3, 4.21.2.4, 4.21.3.1, 4.21.4, 4.22.1, 4.22.2, 4.22.3, 4.22.4, 4.22.4.1, 4.22.5, 4.23, 4.24, 4.24.1, 4.24.2, 4.24.3, 4.24.3.1, 4.25, 4.26, 4.27, 4.27.2, 4.27.6, 4.27.7, 4.27.10, 4.27.11, 4.27.11.1, 4.27.11.2, 5.4, 5.5, 5.6, 5.7, 5.9. These changes were adopted on 5/9/2023 and are effective 7/1/2023.

COLORADO
Department of Local Affairs
Division of Housing

Justification for Emergency Status

Emergency status is justified in order to meet the requirements to allow modification of state adopted building codes and standards to align with a local City and County of Denver declared emergency. The City and County of Denver has declared a state of emergency regarding homelessness and has requested in writing the modification of state adopted building codes and standards to allow a unique housing type not found in the state adopted building codes. These emergency shelters are allowed und the City and County of Denver's adopted building codes. In order to meet the timelines in the emergency declaration the Division of Housing has approved an emergency rule which will be effective for 120 days. The Division of Housing is also beginning a permanent rulemaking process to make this rule permanent.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2023-00712

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

State Housing Board

on 10/24/2023

8 CCR 1302-14

NON-RESIDENTIAL AND RESIDENTIAL FACTORY-BUILT STRUCTURES AND TINY HOMES; SELLERS OF MANUFACTURED HOMES AND TINY HOMES; MANUFACTURED HOME, TINY HOME, AND MULTI-FAMILY STRUCTURE INSTALLATIONS

The above-referenced rules were submitted to this office on 10/24/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 13, 2023 10:58:25

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 11/15/2023

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission

COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC INFORMATIONAL HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

Pursuant to the commission's order dated September 5, 2023, the Water Quality Control Division will report any resolutions made or potential recommendations regarding the issues raised by the City and County of Denver for reconsideration of the 2024 Colorado's Section 303(d) List of Impaired Waters and Monitoring and Evaluation List, Regulation #93.

SCHEDULE OF IMPORTANT DATES:

Written comments due	1/31/2024	Additional submittal information below
Informational Hearing	**2/12/2024 9:00 a.m.**	**Remote Via Zoom** **Or** **Sabin Cleere Conference Room** **Department of Public Health and Environment** **4300 Cherry Creek Drive South** **Denver, CO 80246**

PROCEDURAL MATTERS:

The commission will accept input from interested persons, either in writing prior to the hearing or orally at the hearing. Interested persons should provide their opinions or recommendations. At this informational hearing, the commission does not desire to hear the full evidence that would be presented at a rulemaking hearing.

The commission will receive all written submittals electronically. Submittals must be provided as PDF documents and may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, or otherwise conveyed to the commission office so as to be received no later than the date shown above. Written comments will be available to the public on the commission's web site.

AUTHORITY FOR PUBLIC HEARING:

The provisions of 25-8-202(1) C.R.S. and section 21.5.B of the "Procedural Rules" (5 CCR 1002-21) provide the authority for this hearing.

PARTY STATUS:

This is not a rulemaking hearing; therefore, party status provisions of 25-8-101 et. seq., and 24-4-101 et. seq., C.R.S. do not apply.

Dated this 13th day of November 2023 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Jojo La, Administrator

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 11/22/2023

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

COLORADO
Department of Health Care Policy & Financing

PUBLIC NOTICE

November 25, 2023

Alternative Benefit Plan Alignment

The Department will update the Alternative Benefit Plan (ABP) to align with the State Plan and all other rules and regulations. Effective December 1, 2023, the change will increase access to services included in the ABP as the Department updates the ABP to ensure access to all Essential Health Benefits required under this plan. The state assures that as outlined in 42 CFR §440.345, EPSDT services will continue to be available to all eligible ABP beneficiaries. This notice is being provided to the public with advance notice of the amendment and reasonable opportunity to comment on such amendment, as specified at 42 CFR §440.386.

The annual aggregate increase in speech therapy expenditures (including state funds and federal funds) is $0 in FFY 2023 and $0 in FFY 2024.

For stakeholder comments or questions, please contact Cameron Amirfathi by email at cameron.amirfathi@state.co.us or by phone at (303) 866-5519.

General Information

A link to this notice will be posted on the Department's website starting on July 25, 2023. Written comments may be addressed to:

Director, Health Policy Office
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

County Contact Information

Copies of the proposed changes are available for public review at the following county locations:

County Name	Official Name	Physical Address	Mailing Address
Adams	Adams County Human Services Department	11860 Pecos Street Westminster, CO 80234	Same as physical

Alamosa	Alamosa County Department of Human Services	8900 C Independence Way, Alamosa, CO 81101	PO Box 1310, Alamosa, CO 81101
Arapahoe	Arapahoe County Human Services	14980 E. Alameda Dr., Aurora, CO 80012	14980 E. Alameda Dr., Aurora, CO 80012
Arapahoe	Satellite Office	1690 W. Littleton Blvd., Littleton, CO 80120	
Archuleta	Archuleta County Human Services	551 Hot Springs Blvd., Pagosa Springs, CO 81147	PO Box 240, Pagosa Springs, CO 81147
Baca	Baca County Department of Social Services	772 Colorado St. Ste #1, Springfield, CO 81073	Same as physical
Bent	Bent County Social Services	138 6th Street, Las Animas, CO 81054	Same as physical
Boulder	Boulder County Department of Housing & Human Services	3400 Broadway, Boulder, CO 80304	PO Box 471, Boulder, CO 80306
Broomfield	Broomfield Health and Human Services	100 Spader Way, Broomfield, CO 80020	Same as physical
Chaffee	Chaffee County Department of Human Services	448 E. 1st St, Ste 166, Salida, CO 81201	PO Box 1007, Salida, CO 81201
Cheyenne	Cheyenne County Department of Human Services	560 W. 6 N, Cheyenne Wells, CO 80810	PO Box 146, Cheyenne Wells, CO 80810
Conejos	Conejos County Department of Social Services	12989 Cty. Rd. G.6, Conejos, CO 81129	PO Box 68, Conejos, CO 81129
Costilla	Costilla County Department of Social Services	233 Main St, San Luis, CO 81152	Same as physical
Crowley	Crowley County Department of Human Services	631 Main Street Ste 100, Ordway, CO 81063	Same as physical
Custer	Custer County Department of Human Services	205 S. 6th St., Westcliffe, CO 81252	PO Box 929 Westcliffe, CO 81252
Delta	Delta County Department of Human Services	560 Dodge St, Delta, CO 81416	Same as physical
Denver	Denver Department of Human Services	1200 Federal Blvd, Denver, CO 80204	Same as physical
Dolores	Dolores County Department of Social Services	409 Main Street, Dove Creek, CO 81324	PO Box 485 Dove Creek, CO 81324
Douglas	Douglas County Department of Human Services	4400 Castleton Court, Castle Rock, CO 80109	Same as physical

Eagle	Eagle County Department of Human Services	551 Broadway, Eagle, CO 81631	PO Box 660, Eagle, CO 81631
El Paso	El Paso County Department of Human Services	1675 W. Garden of the Gods Road, Colorado Springs, CO 80907	Same as physical
Elbert	Elbert County Health and Human Services	75 Ute. Ave, Kiowa, CO 80117	PO Box 924, Kiowa, CO 80117
Fremont	Fremont County Department of Human Services	172 Justice Center Road, Canon City, CO 81212	Same as physical
Garfield	Garfield County Department of Human Services	195 W. 14th St., Rifle, CO 81650	Same as physical
Gilpin	Gilpin County Department of Human Services	2960 Dory Hill Rd. Ste 100, Black Hawk, CO 80422	Same as physical
Grand	Grand County Department of Social Services	620 Hemlock St., Hot Sulphur Springs, CO 80451	PO Box 204, Hot Sulphur Springs, CO 80451
Huerfano	Huerfano County Department of Social Services	121 W. 6th St., Walsenburg, CO 81089	Same as physical
Jackson	Grand County Department of Social Services	620 Hemlock St., Hot Sulphur Springs, CO 80451	PO Box 204, Hot Sulphur Springs, CO 80451
Jefferson	Jefferson County Human Services	900 Jefferson County Parkway, Golden, CO 80401	Same as physical
Kiowa	Kiowa County Department of Social Services	1307 Maine St., Eads, CO 81036	PO Box 187, Eads, CO 81036-0187
Kit Carson	Kit Carson County Department of Human Services	252 S. 14th St., Burlington, CO 80807	PO Box 70, Burlington, CO 80807
La Plata	La Plata County Department of Human Services	10 Burnett Court 1st Floor, Durango, CO 81301	Same as physical
Lake	Lake County Department of Human Services	112 W. 5th St. Leadville, CO 80461	PO Box 884 Leadville, CO 80461
Larimer	Larimer County	1501 Blue Spruce Drive	Same as physical
Las Animas	Las Animas County Department of Human Services	204 S. Chestnut St., Trinidad, CO 81082	Same as physical
Lincoln	Lincoln County Department of Human Services	103 3rd Ave, Hugo, CO 80821	PO Box 37, Hugo, CO 80821
Logan	Logan County Department of Human Services	508 S. 10th Ave, STE B, Sterling, CO 80751	Same as physical

Mesa	Mesa County Department of Human Services	510 29 1/2 Rd, Grand Junction, CO 81504	PO Box 20000, Grand Junction, CO 81502
Mineral	Rio Grande/Mineral County Department of Social Services	1015 6th St, Del Norte, CO 81132	Same as physical
Moffat	Moffat County Department of Social Services	595 Breeze St., Craig, CO 81625	Same as physical
Montezuma	Montezuma County Department of Social Services	109 W. Main St. Room 2013, Cortez, CO 81321	Same as physical
Montrose	Montrose County Health & Human Services	1845 S. Townsend Ave., Montrose, CO 81401	PO Box 216, Montrose, CO 81402-216
Morgan	Morgan County Department of Human Services	800 E. Beaver Ave., Fort Morgan, CO 80701	PO Box 220, Fort Morgan, CO 80701
Otero	Otero County Department of Human Services	215 Raton Ave, La Junta, CO 81050	PO Box 494, La Junta, CO 81050
Ouray	Ouray DSS	177 Sherman St., Unit 104, Ridgway, CO 81432	PO Box 530 Ridgway, CO 81432
Phillips	Phillips County Department of Social Services	127 E Denver St., Holyoke, CO, 80734	Same as physical
Pitkin	Pitkin County Department of Health and Human Services	0405 Castle Creek Rd., Suite 104, Aspen, CO 81611	Same as physical
Pueblo	Pueblo County Department of Social Services	201 W. 8th St, Pueblo, CO 81003	320 W. 10th St, Pueblo, CO 81003
Rio Blanco	Rio Blanco County Department of Health and Human Services	345 Market St., Meeker, CO 81641	Same as physical
Routt	Routt County Department of Human Services	135 6th St., Steamboat Springs, CO 80477	PO Box 772790, Steamboat Springs, CO 80477
Saguache	Saguache County Department of Social Services	605 Christy Ave, Saguache, CO 81149	PO Box 215, Saguache, CO 81149
San Miguel	San Miguel DSS	333 W. Colorado Ave, Telluride, CO 81435 (San Miguel);	PO Box 96 Telluride, CO 81435
Sedgwick	Sedgwick County Human Services	118 W. 3rd St., Julesburg, CO 80737	PO Box 27, Julesburg, CO 80737
Washington	Washington County DHS	126 W. 5th St., Akron, CO 80720	PO Box 395, Akron, CO 80720

Yuma	Yuma County Department of Human Services	340 S. Birch, Wray, CO 80758	Same as physical

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 11/22/2023

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

PUBLIC NOTICE

November 25, 2023

Targeted Case Management – Transition Coordination Services

The Department of Health Care Policy and Financing (Department) intends to submit a State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) to update the unit limitations for Targeted Case Management – Transition Coordination Services. Effective October 1, 2023, the total number of Targeted Case Management - Transition Coordination Services units per member is increased from 240 to 360 units per service year. The Department has updated the eligible individuals for this service to those who are residing in a hospital. The Department has updated the name of the service from Transition Services to Transition Coordination.

The annual aggregate increase in expenditures (including state funds and federal funds) is $0 total funds including $0 state funds and $0 federal funds in FFY 2023 and $2,164,028 total funds including $1,082,014 state funds and $1,082,014 federal funds in FFY 2024.

General Information

A link to this notice will be posted on the Department's website starting on November 25, 2023. Written comments may be addressed to:

Director, Health Programs Office
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

County Contact Information

Copies of the proposed changes are available for public review at the following county locations:

County Name	Official Name	Physical Address	Mailing Address
Adams	Adams County Human Services Department	11860 Pecos Street Westminster, CO 80234	Same as physical

Alamosa	Alamosa County Department of Human Services	8900 C Independence Way, Alamosa, CO 81101	PO Box 1310, Alamosa, CO 81101
Arapahoe	Arapahoe County Human Services	14980 E. Alameda Dr., Aurora, CO 80012	14980 E. Alameda Dr., Aurora, CO 80012
Arapahoe	Satellite Office	1690 W. Littleton Blvd., Littleton, CO 80120	
Archuleta	Archuleta County Human Services	551 Hot Springs Blvd., Pagosa Springs, CO 81147	PO Box 240, Pagosa Springs, CO 81147
Baca	Baca County Department of Social Services	772 Colorado St. Ste #1, Springfield, CO 81073	Same as physical
Bent	Bent County Social Services	138 6th Street, Las Animas, CO 81054	Same as physical
Boulder	Boulder County Department of Housing & Human Services	3400 Broadway, Boulder, CO 80304	PO Box 471, Boulder, CO 80306
Broomfield	Broomfield Health and Human Services	100 Spader Way, Broomfield, CO 80020	Same as physical
Chaffee	Chaffee County Department of Human Services	448 E. 1st St, Ste 166, Salida, CO 81201	PO Box 1007, Salida, CO 81201
Cheyenne	Cheyenne County Department of Human Services	560 W. 6 N, Cheyenne Wells, CO 80810	PO Box 146, Cheyenne Wells, CO 80810
Conejos	Conejos County Department of Social Services	12989 Cty. Rd. G.6, Conejos, CO 81129	PO Box 68, Conejos, CO 81129
Costilla	Costilla County Department of Social Services	233 Main St, San Luis, CO 81152	Same as physical
Crowley	Crowley County Department of Human Services	631 Main Street Ste 100, Ordway, CO 81063	Same as physical
Custer	Custer County Department of Human Services	205 S. 6th St., Westcliffe, CO 81252	PO Box 929 Westcliffe, CO 81252
Delta	Delta County Department of Human Services	560 Dodge St, Delta, CO 81416	Same as physical
Denver	Denver Department of Human Services	1200 Federal Blvd, Denver, CO 80204	Same as physical
Dolores	Dolores County Department of Social Services	409 Main Street, Dove Creek, CO 81324	PO Box 485 Dove Creek, CO 81324
Douglas	Douglas County Department of Human Services	4400 Castleton Court, Castle Rock, CO 80109	Same as physical

Eagle	Eagle County Department of Human Services	551 Broadway, Eagle, CO 81631	PO Box 660, Eagle, CO 81631
El Paso	El Paso County Department of Human Services	1675 W. Garden of the Gods Road, Colorado Springs, CO 80907	Same as physical
Elbert	Elbert County Health and Human Services	75 Ute. Ave, Kiowa, CO 80117	PO Box 924, Kiowa, CO 80117
Fremont	Fremont County Department of Human Services	172 Justice Center Road, Canon City, CO 81212	Same as physical
Garfield	Garfield County Department of Human Services	195 W. 14th St., Rifle, CO 81650	Same as physical
Gilpin	Gilpin County Department of Human Services	2960 Dory Hill Rd. Ste 100, Black Hawk, CO 80422	Same as physical
Grand	Grand County Department of Social Services	620 Hemlock St., Hot Sulphur Springs, CO 80451	PO Box 204, Hot Sulphur Springs, CO 80451
Huerfano	Huerfano County Department of Social Services	121 W. 6th St., Walsenburg, CO 81089	Same as physical
Jackson	Grand County Department of Social Services	620 Hemlock St., Hot Sulphur Springs, CO 80451	PO Box 204, Hot Sulphur Springs, CO 80451
Jefferson	Jefferson County Human Services	900 Jefferson County Parkway, Golden, CO 80401	Same as physical
Kiowa	Kiowa County Department of Social Services	1307 Maine St., Eads, CO 81036	PO Box 187, Eads, CO 81036-0187
Kit Carson	Kit Carson County Department of Human Services	252 S. 14th St., Burlington, CO 80807	PO Box 70, Burlington, CO 80807
La Plata	La Plata County Department of Human Services	10 Burnett Court 1st Floor, Durango, CO 81301	Same as physical
Lake	Lake County Department of Human Services	112 W. 5th St. Leadville, CO 80461	PO Box 884 Leadville, CO 80461
Larimer	Larimer County	1501 Blue Spruce Drive	Same as physical
Las Animas	Las Animas County Department of Human Services	204 S. Chestnut St., Trinidad, CO 81082	Same as physical
Lincoln	Lincoln County Department of Human Services	103 3rd Ave, Hugo, CO 80821	PO Box 37, Hugo, CO 80821
Logan	Logan County Department of Human Services	508 S. 10th Ave, STE B, Sterling, CO 80751	Same as physical

Mesa	Mesa County Department of Human Services	510 29 1/2 Rd, Grand Junction, CO 81504	PO Box 20000, Grand Junction, CO 81502
Mineral	Rio Grande/Mineral County Department of Social Services	1015 6th St, Del Norte, CO 81132	Same as physical
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Morgan	Morgan County Department of Human Services	800 E. Beaver Ave., Fort Morgan, CO 80701	PO Box 220, Fort Morgan, CO 80701
Otero	Otero County Department of Human Services	215 Raton Ave, La Junta, CO 81050	PO Box 494, La Junta, CO 81050
Ouray	Ouray DSS	177 Sherman St., Unit 104, Ridgway, CO 81432	PO Box 530 Ridgway, CO 81432
Phillips	Phillips County Department of Social Services	127 E Denver St., Holyoke, CO, 80734	Same as physical
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Routt	Routt County Department of Human Services	135 6th St., Steamboat Springs, CO 80477	PO Box 772790, Steamboat Springs, CO 80477
Saguache	Saguache County Department of Social Services	605 Christy Ave, Saguache, CO 81149	PO Box 215, Saguache, CO 81149
San Miguel	San Miguel DSS	333 W. Colorado Ave, Telluride, CO 81435 (San Miguel);	PO Box 96 Telluride, CO 81435
Sedgwick	Sedgwick County Human Services	118 W. 3rd St., Julesburg, CO 80737	PO Box 27, Julesburg, CO 80737
Washington	Washington County DHS	126 W. 5th St., Akron, CO 80720	PO Box 395, Akron, CO 80720

Yuma	Yuma County Department of Human Services	340 S. Birch, Wray, CO 80758	Same as physical

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 11/22/2023

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Architects, Engineers, and Land Surveyors

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

NOTICE OF PERMANENT RULEMAKING HEARING
STATE BOARD OF LICENSURE FOR ARCHITECTS, PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

The purpose of this Permanent Rulemaking Hearing is to allow stakeholders a final opportunity to testify before the Board determines whether to repeal, on a permanent basis, Rule 1.9 - PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES to implement Colorado Senate Bill 23-265 (Concerning a Prohibition on a Regulator Imposing Discipline Against a Person Based on Certain Activities Involving Marijuana).

This Hearing will be held via WEBINAR ONLY

Friday, December 8, 2023, at 9:00 A.M. (MDT)

To attend the meeting via webcast, please register using the link below:

https://us06web.zoom.us/webinar/register/WN_SkzuDYypTi63TY6-Mn-Rrw

What is this About?

The purpose of this Permanent Rulemaking Hearing is to allow is to allow stakeholders to testify before the Board decides whether to repeal Rule 1.9 to implement Colorado Senate Bill 23-265.

How do I submit my comments and what is the deadline?

We will hold a virtual Permanent Rulemaking Hearing on Friday, December 8, 2023, at 9:00 A.M. (MDT). Stakeholder testimonies will be limited to the above referenced topics, please register in advance to provide testimony at the hearing. If you cannot attend the hearing virtually or wish to make written comments regarding SB23-265 rather than speaking, you may email your written comments to dora_dpo_rulemaking@state.co.us as soon as possible.

Will my comments become part of the official record for rulemaking?

Your written and oral comments will be publicly available, and provided to the Board before the Board considers adopting any proposed new rules.

May I invite others?

YES! If you know of any person or persons who may be interested in providing input, please do not hesitate to forward this information.

What if I need additional Information?

If you have any questions or concerns about stakeholder input, please send them to dora_dpo_rulemaking@state.co.us.

Calendar of Hearings

Hearing Date/Time	Agency	Location
12/21/2023 09:15 AM	Division of Gaming - Rules promulgated by Gaming Commission	1707 Cole Blvd, Redrocks Conference Room, Lakewood, CO 80401, and virtually
12/15/2023 10:00 AM	Markets Division	via Zoom - link is contained in the hearing notice
12/19/2023 01:00 PM	Division of Housing	Virtual
12/18/2023 05:30 PM	General Early Childhood Administration and Programs	Webinar Only: https://us02web.zoom.us/meeting/register/tZEsceCurzkuH9JG28NfoErOC2jk2f9D2svg
12/18/2023 05:30 PM	Child Care Program Licensing	Webinar Only: https://us02web.zoom.us/meeting/register/tZEsceCurzkuH9JG28NfoErOC2jk2f9D2svg
12/19/2023 11:00 AM	Secretary of State	Please see the Additional Information section for details.
12/19/2023 09:30 AM	Division of Fire Prevention and Control	Virtual Google Meet meet.google.com/cif-tbnj-hzt
12/15/2023 10:00 AM	Division of Homeland Security and Emergency Management	Virtual Google Meet meet.google.com/guc-mjrn-dfw