Colorado Register

46 CR 24

Volume 46 , No. 24

December 25, 2023

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

2023-00798

Department

200 - Department of Revenue

Agency

201 - Taxation Division

CCR number

1 CCR 201-2

Rule title

INCOME TAX

Rulemaking Hearing

Date

01/18/2024

Time

10:00 AM

Location

Virtual Hearing - See Comments

Subjects and issues involved

The purpose of the amendments to this rule is to provide additional guidance and clarification regarding the innovative motor vehicle and innovative truck credits and to update the rule to reflect changes made to the credits by House Bill 23-1272. Amendments to the rule address tax-exempt persons and political subdivisions; necessary conditions for a motor vehicle or truck to be considered new; titling and registration requirements; the tax year for which a credit may be claimed; the manufacturers suggested retail price for the purpose of determining eligibility and the credit amount; leased motor vehicles and trucks; and credit assignment.

Statutory authority

The statutory bases for this rule are sections 39-21-112(1), 39-22-516.7, and 39-22-516.8, C.R.S.

Contact information

Name

Josh Pens

Title

Director

Telephone

3038665627

Email

dor_taxrules@state.co.us

DEPARTMENT OF REVENUE

Taxation Division

INCOME TAX

1 CCR 201-2

Rule 39-22-516. Innovative Motor Vehicle and Innovative Truck Credits.

Basis and Purpose. The bases for this rule are ~~§~~sections 39-21-112(1), ~~C.R.S. and §~~ 39-22-516.7, and 39-22-516.8, C.R.S. The purpose of this rule is to provide ~~clarification~~guidance regarding the innovative motor vehicle and innovative truck credits, the requirements~~conditions necessary to qualify~~ for the credits, and the ~~process for assigning~~assignment of ~~the~~ credits.

(1) **General Rule.** An income tax credit is allowed pursuant to section 39-22-516.7 or 39-22-516.8, C.R.S., to any person for the purchase or lease of a qualifying motor vehicle or a qualifying truck. For income tax years commencing on or after January 1, 2024, the credit is also allowed to a person or political subdivision of the state that is exempt from taxation under section 39-22-112(1), C.R.S.

(2) **New Motor Vehicles and Trucks.** A motor vehicle or truck must be new at the time of purchase or lease to qualify for a credit. For the purpose of this paragraph and sections 39-22-516.7(1)(r)(II)(A) and 39-22-516.8(1)(ee)(II), C.R.S., a motor vehicle or truck is new if it is being transferred for the first time from a manufacturer or importer, or dealer or agent of a manufacturer or importer, to the end user or customer. A motor vehicle or truck that has been used by a dealer for the purpose of demonstration to prospective customers is considered new unless such demonstration use has been for more than one thousand five hundred miles. Any motor vehicle or truck that has been titled or registered or both in Colorado or any other state or jurisdiction prior to purchase or lease is not considered new.

(3) **Titling and Registration.**

(a) *Colorado Titling and Registration.*

(i) A credit is allowed only with respect to:

(A) motor vehicles and trucks that are titled in Colorado under article 6 of title 42, C.R.S., and registered in Colorado by the purchaser or lessee in accordance with article 3 of title 42, C.R.S., and

(B) trucks registered by the purchaser or lessee under the International Registration Plan and base plated in Colorado.

(ii) For the purpose of sections 39-22-516.7 and 39-22-516.8, C.R.S., and this rule, a motor vehicle or truck with an active temporary registration described in section 42-3-203(3)(b), C.R.S., is not considered registered in Colorado.

(b) *Titling and Registration in Another State.* A motor vehicle or truck that has been titled or registered or both in any other state prior to being titled and registered in Colorado does not qualify for a credit. If a purchaser or lessee takes possession of a motor vehicle or truck in another state, the issuance of a temporary license plate for the purpose of

moving the motor vehicle or truck to Colorado does not constitute registration in that state.

(4) **Tax Year of the Purchase or Lease and Amount.**

(a) The credit is allowed for the tax year in which the purchase or lease of the qualifying motor vehicle or truck is completed. A purchase or lease is not considered complete prior to the date on which the purchaser or lessee takes possession of the motor vehicle or truck. If the purchaser or lessee enters into an agreement to purchase or lease a qualifying motor vehicle or truck in a tax year prior to the tax year in which the purchaser or lessee takes possession of the motor vehicle or truck, the credit is allowed for the tax year in which the purchaser or lessee takes possession of the motor vehicle or truck.

(b) The amount of the credit is determined with respect to the tax year that the credit is allowed to the purchaser or lessee pursuant to paragraph (4)(a) of this rule, regardless of whether the purchaser or lessee assigns the credit to a financing entity or motor vehicle dealer pursuant to section 39-22-516.7(2)(e), 39-22-516.7(2)(f), 39-22-516.8(13.5), or 39-22-516.8(13.7), C.R.S.

(c) With respect to tax years commencing on or after January 1, 2021, but prior to January 1, 2023, the amount of the credit allowed pursuant to section 39-22-516.7, C.R.S., is determined under section 39-22-516.7(4)(a)(IV), C.R.S., regardless of whether the category 1 motor vehicle was sold or leased on or after January 1, 2023.

(d) With respect to tax years commencing on or after January 1, 2023, but prior to January 1, 2025, the amount of the credit allowed pursuant to section 39-22-516.7, C.R.S., is determined under section 39-22-516.7(4)(a)(V) or (VI), C.R.S., as applicable based on the date the category 1 vehicle was purchased or leased.

(5) **Manufacturer's Suggested Retail Price.**

(a) "Manufacturer's suggested retail price" is defined in section 39-22-516.7(1)(p.5), C.R.S., by reference to section 42-1-102(50), C.R.S., which states: "'Manufacturer's suggested retail price' means the retail price of such motor vehicle suggested by the manufacturer plus the retail price suggested by the manufacturer for each accessory or item of optional equipment physically attached to such vehicle prior to the sale to the retail purchaser." As used in this definition, for the purpose of the credit allowed pursuant to section 39-22-516.7, C.R.S.:

(i) "the retail price of such motor vehicle suggested by the manufacturer" is the retail price of the motor vehicle suggested by the manufacturer and disclosed on the label the manufacturer affixed to the windshield or side window of the motor vehicle pursuant to 15 U.S.C. sec. 1232(f)(1); and

(ii) "the retail price suggested by the manufacturer for each accessory or item of optional equipment physically attached to such vehicle prior to the sale to the retail purchaser" is the retail price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the motor vehicle and disclosed on the label the manufacturer affixed to the windshield or side window of the motor vehicle pursuant to 15 U.S.C. sec.1232(f)(2).

(b) "Manufacturer's suggested retail price" does not include the amount charged, if any, to the dealer for the transportation of the motor vehicle to the location at which it is delivered to such dealer, commonly known as the destination fee or destination charge, that is

disclosed on the label the manufacturer affixed to the windshield or side window of the motor vehicle pursuant to 15 U.S.C. sec. 1232(f)(3).

(6) **Leases.**

(a) A leased motor vehicle or truck qualifies for a credit only if the lease term is not less than two years.

(b) For the lease of a qualifying motor vehicle or truck, the lessee, not the lessor, is allowed to claim the credit.

(c) For the purpose of this paragraph (6), a "short-term rental" described in section 39-22-516.7(9.5), C.R.S., is not considered a lease.

(d) In the case of a leased motor vehicle or truck, the credit is allowed for the tax year determined pursuant to paragraph (4)(a) of this rule. No additional credit is allowed for any subsequent tax year during which the lease continues.

(e) *Early Termination of Leases.* The lease of a qualifying motor vehicle or truck must be for a term of not less than two years to qualify for a credit. If a lessee enters into a bona fide lease agreement of not less than two years, but terminates the lease early, such early termination will not abrogate the lessee's right to any allowable credit or require any recapture of the allowable credit claimed for the lease.

(7) **Credit Assignment.**

(a) *Election to Assign a Credit*. For qualifying motor vehicles or trucks sold or leased on or after January 1, 2017, but prior to January 1, 2024, a purchaser or lessee may, by mutual agreement with a financing entity, assign an allowable credit to the financing entity pursuant to section 39-22-516.7(2)(e) or 39-22-516.8(13.5), C.R.S. For qualifying motor vehicles or trucks sold or leased on or after January 1, 2024, a purchaser or lessee may, by mutual agreement with a financing entity or motor vehicle dealer, assign an allowable credit to the financing entity or motor vehicle dealer pursuant to section 39-22-516.7(2)(f) or 39-22-516.8(13.7), C.R.S. For the purpose of this paragraph (7), the term "assignee" means a financing entity or motor vehicle dealer that has accepted assignment of a credit.

(b) *Compensation.* An assignee must compensate the purchaser or lessee as prescribed in section 39-22-516.7(2)(e)(I)(D), 39-22-516.7(2)(f)(I)(D), 39-22-516.8(13.5)(a)(IV), or 39-22-516.8(13.7)(a)(IV), C.R.S., as applicable. Compensation must be made in the form of a cash payment, a reduction in the cash price, a capitalized cost reduction, or some similar consideration and must be reflected as a separate line item in the sales, loan, or lease agreement for the motor vehicle or truck. Such compensation must be made effective on the date the election statement to assign the credit is executed and not applied at any subsequent date.

(c) *Election Statement.* The purchaser or lessee and the assignee must complete the assignment of the credit at the time of purchase or lease by executing Department form DR 0618, Innovative Motor Vehicle Tax Credit – Election Statement. Pursuant to section 39-21-113(1)(b), C.R.S., an assignee must keep and preserve the executed election statement in its records for a period of four years following the due date of the return for the tax year during which the assignment occurred.

(i) For qualifying motor vehicles or trucks sold or leased on or after January 1, 2017, but prior to January 1, 2024, the assignee must file a copy of the election

statement for each assigned credit along with its original tax return for the tax year in which the credit was assigned. If the assignee fails to file a copy of the election statement for each assigned credit with its return, the credit(s) claimed by the assignee may be disallowed.

(ii) For qualifying motor vehicles or trucks sold or leased on or after January 1, 2024, the assignee must provide a copy of election statement for any assigned credit to the Department upon request. If the assignee fails to provide a copy of any election statement requested by the Department, the credit(s) claimed by the assignee may be disallowed.

(d) *Electronic Report*. An assignee must submit an electronic report to the Department containing the information in the election statement as required by section 39-22-516.7 or 39-22-516.8, C.R.S., and this paragraph (7)(d).

(i) *Deadline for Submitting the Electronic Report.*

(A) For qualifying motor vehicles and trucks sold or leased on or after January 1, 2017, but prior to January 1, 2024, the assignee must submit the electronic report to the Department within thirty days of the date of assignment.

(B) For qualifying motor vehicles and trucks sold or leased on or after January 1, 2024, the assignee must submit the electronic report to the Department on a quarterly basis. The due dates for the quarterly reports are the same as the due dates for estimated payments pursuant to section 39-22-606, C.R.S., determined with respect to the assignee's tax year. Each assigned credit must be included in the first quarterly report due after the month in which the credit was assigned.

(ii) *Failure to Submit the Electronic Report Timely*. If the assignee fails to submit an electronic report for an assigned credit in a timely manner pursuant to paragraph (7)(d)(i)(A) of this rule, the assignee may thereafter submit an electronic report for the assigned credit. If the assignee fails to include any assigned credit pursuant to paragraph (7)(d)(i)(B) of this rule in a timely filed quarterly electronic report, the assignee may include that assigned credit in an electronic report timely filed for a subsequent quarter. However, if the assignee fails to report assignment of a credit in the time provided pursuant to paragraph (7)(d)(i) of this rule and the purchaser or lessee files an income tax return claiming any allowable credit prior to the assignee reporting the assignment of the credit late under this paragraph (7)(d)(ii), the credit is allowed to the purchaser or lessee and not to the assignee. If the assignee fails to electronically report an assigned credit by the deadline prescribed in paragraph (7)(d)(i) of this rule, the credit is allowed to the assignee only if:

(A) the assignee submits the electronic report before the assignee claims the credit; and

(B) the credit has not already been allowed to the purchaser or lessee.

(e) *Assignment by Exempt Entities.* A person or a political subdivision of the state that is exempt from taxation under section 39-22-112(1), C.R.S., that is a "purchaser" under section 36-22-516.7(1)(r.3)(II) or 39-22-516.8(1)(bb.3), C.R.S., and that assigns a credit to a financing entity or motor vehicle dealer pursuant to section 36-22-516.7(2)(f) or 39-22-516.8(13.7), C.R.S., is not required by section 39-22-516.7(10), 39-22-516.8(17.5), or

39-22-601(7)(b), C.R.S., to file a Colorado income tax return with respect to the assigned credit.

(1) **General Rule.** An income tax credit is allowed pursuant to section 39-22-516.7 or 39-22-516.8, C.R.S., to any person for the purchase or lease of a qualifying motor vehicle or a qualifying truck. For income tax years commencing on or after January 1, 2024, the credit is also allowed to a person or political subdivision of the state that is exempt from taxation under section 39-22-112(1), C.R.S.

(2) **New Motor Vehicles and Trucks.** A motor vehicle or truck must be new at the time of purchase or lease to qualify for a credit. For the purpose of this paragraph and sections 39-22-516.7(1)(r)(II)(A) and 39-22-516.8(1)(ee)(II), C.R.S., a motor vehicle or truck is new if it is being transferred for the first time from a manufacturer or importer, or dealer or agent of a manufacturer or importer, to the end user or customer. A motor vehicle or truck that has been used by a dealer for the purpose of demonstration to prospective customers is considered new unless such demonstration use has been for more than one thousand five hundred miles. Any motor vehicle or truck that has been titled or registered or both in Colorado or any other state or jurisdiction prior to purchase or lease is not considered new.

(3) **Titling and Registration.** A credit is allowed only with respect to motor vehicles and trucks that are titled in Colorado under article 6 of title 42, C.R.S., and registered in Colorado by the purchaser or lessee in accordance with article 3 of title 42, C.R.S., and trucks registered by the purchaser or lessee under the International Registration Plan and base plated in Colorado. For the purpose of sections 39-22-516.7 and 39-22-516.8, C.R.S., and this rule, a motor vehicle or truck with an active "Temporary Registration Permit" as defined in 1 CCR 204-10, Rule 34 is not considered registered in Colorado. A motor vehicle or truck that has been titled or registered or both in any other state prior to being titled and registered in Colorado does not qualify for a credit.

(4) **Tax Year of the Purchase or Lease and Amount.**

(a) The credit is allowed for the tax year in which the purchase or lease of the qualifying motor vehicle or truck is completed. A purchase or lease is not considered complete prior to the date on which the purchaser or lessee takes possession of the motor vehicle or truck. If the purchaser or lessee enters into an agreement to purchase or lease a qualifying motor vehicle or truck in a tax year prior to the tax year in which the purchaser or lessee takes possession of the motor vehicle or truck, the credit is allowed for the tax year in which the purchaser or lessee takes possession of the motor vehicle or truck.

(b) The amount of the credit is determined with respect to the tax year that the credit is allowed to the purchaser or lessee pursuant to paragraph (4)(a) of this rule, regardless of whether the purchaser or lessee assigns the credit to a financing entity or motor vehicle dealer pursuant to section 39-22-516.7(2)(e), 39-22-516.7(2)(f), 39-22-516.8(13.5), or 39-22-516.8(13.7), C.R.S.

(c) With respect to tax years commencing on or after January 1, 2021, but prior to January 1, 2023, the amount of the credit allowed pursuant to section 39-22-516.7, C.R.S., is determined under section 39-22-516.7(4)(a)(IV), C.R.S., regardless of whether the category 1 motor vehicle was sold or leased on or after January 1, 2023.

(d) With respect to tax years commencing on or after January 1, 2023, but prior to January 1, 2025, the amount of the credit allowed pursuant to section 39-22-516.7, C.R.S., is determined under section 39-22-516.7(4)(a)(V) or (VI) as applicable based on the date the category 1 vehicle was purchased or leased.

(5) **Manufacturer's Suggested Retail Price.**

(a) "Manufacturer's suggested retail price" is defined in section 39-22-516.7(1)(p.5), C.R.S., by reference to section 42-1-102(50), C.R.S., which states: "'Manufacturer's suggested retail price' means the retail price of such motor vehicle suggested by the manufacturer plus the retail price suggested by the manufacturer for each accessory or item of optional equipment physically attached to such vehicle prior to the sale to the retail purchaser." As used in this definition, for the purpose of the credit allowed pursuant to section 39-22-516.7, C.R.S.:

(i) "the retail price of such motor vehicle suggested by the manufacturer" is the retail price of the motor vehicle suggested by the manufacturer and disclosed on the label the manufacturer affixed to the windshield or side window of the motor vehicle pursuant to 15 U.S.C. sec. 1232(f)(1); and

(ii) "the retail price suggested by the manufacturer for each accessory or item of optional equipment physically attached to such vehicle prior to the sale to the retail purchaser" is the retail price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the motor vehicle and disclosed on the label the manufacturer affixed to the windshield or side window of the motor vehicle pursuant to 15 U.S.C. sec.1232(f)(2).

(b) "Manufacturer's suggested retail price" does not include the amount charged, if any, to the dealer for the transportation of the motor vehicle to the location at which it is delivered to such dealer, commonly known as the destination fee or destination charge, that is disclosed on the label the manufacturer affixed to the windshield or side window of the motor vehicle pursuant to 15 U.S.C. sec. 1232(f)(3).

(6) **Leases.**

(a) A leased motor vehicle or truck qualifies for a credit only if it the lease term is not less than two years. No credit is allowed for any motor vehicle or truck leased for less than two years.

(b) For the lease of a qualifying motor vehicle or truck, the lessee, not the lessor, is allowed to claim the credit.

(c) For the purpose of this paragraph (6), a "short-term rental" described in section 39-22-516.7(9.5), C.R.S., is not considered a lease.

(d) In the case of a leased motor vehicle or truck, the credit is allowed for the tax year determined pursuant to paragraph (4)(a) of this rule. No additional credit is allowed for any subsequent tax year during which the lease continues.

(e) *Early Termination of Leases.* The lease of a qualifying motor vehicle or truck must be for a term of not less than two years to qualify for a credit. If a lessee enters into a bona fide lease agreement of not less than two years, but terminates the lease early, such early termination will not abrogate the lessee's right to any allowable credit or require any recapture of the allowable credit claimed for the lease.

(7) **Credit Assignment.**

(a) *Compensation.* A financing entity or motor vehicle dealer that accepts assignment of a credit must compensate the purchaser or lessee as prescribed in section 39-22-516.7(2)(e)(I)(D), 39-22-516.7(2)(f)(I)(D), 39-22-516.8(13.5)(a)(IV), or 39-22-516.8(13.7)(a)(IV), C.R.S., as applicable. Compensation must be made in the form of a cash payment, a reduction in the cash price, a capitalized cost reduction, or some similar

consideration and must be reflected in the sales, loan, or lease agreement for the motor vehicle or truck. Such compensation must be made effective on the date the election statement to assign the credit is executed and not applied at any subsequent date.

(b) *Electronic Report.* For tax years commencing on or after January 1, 2024, a financing entity or motor vehicle dealer must submit the electronic report required pursuant to sections 39-22-516.7(2)(f)(V) and 39-22-516.8(13.7)(e), C.R.S., for each quarter of their tax year in which they accept assignment of a credit. The financing entity or motor vehicle dealer that accepts assignment of the credit (the "assignee") must submit the electronic report within fifteen days of the close of the quarter. If the assignee fails to submit the electronic report and the purchaser or lessee files a return claiming any allowable credit, the credit is allowed to the purchaser or lessee and not to the assignee. If the assignee fails to submit the electronic report within fifteen days of the close of the quarter, the credit is allowed to the assignee only if the assignee submits the electronic report before both:

(i) the assignee claims the credit; and

(ii) the credit has been allowed to the purchaser or lessee.

(c) *Assignment by Exempt Entities.* A person or a political subdivision of the state that is exempt from taxation under section 39-22-112(1), C.R.S., is a "purchaser" under section 36-22-516.7(1)(r.3)(II) or 39-22-516.8(1)(bb.3), C.R.S., and assigns a credit to a financing entity or motor vehicle dealer pursuant to section 36-22-516.7(2)(f) or 39-22-516.8(13.7), C.R.S., is not required to by section 39-22-516.7(10), 39-22-516.8(17.5), or 39-22-601(7)(b), C.R.S., to file a Colorado income tax return with respect to the assigned credit.

(1) **Application.** This rule applies for tax years commencing on or after January 1, 2017 to both the innovative motor vehicle credit authorized by § 39-22-516.7, C.R.S. and the innovative truck credit authorized by § 39-22-516.8, C.R.S. (collectively referred to as the "Credit").

(2) **Definitions.** As used in this rule, unless context otherwise requires:

(a) "Date of Purchase, Lease, or Modification" means the date the Purchaser enters into a legally binding agreement to purchase, lease, or Modify a motor vehicle, truck, or trailer, provided the Purchaser takes possession of the new or Modified motor vehicle, truck, trailer, within 10 days of this date. If the Purchaser does not take possession of the new or Modified motor vehicle, truck, or trailer within 10 days of the execution of the legally binding agreement, the "Date of Purchase, Lease, or Modification" is the date the Purchaser takes possession of the new or Modified motor vehicle, truck, or trailer.

(b) "Financing Entity" has the same meaning as in §§ 39-22-516.7(1)(k.5) and 516.8(1)(r.5), C.R.S.

(c) "Modification" means a Qualifying Conversion, the installation of a Qualifying Device, or the conversion of a trailer into a Qualifying Trailer. "Modify" means to convert or alter a motor vehicle, truck, or trailer with a Modification.

(d) "New vehicle" means a motor vehicle or truck being transferred for the first time from a manufacturer or importer, or dealer or agent of a manufacturer or importer, to the end user or customer. A motor vehicle or truck that has been used by a dealer for the purpose of demonstration to prospective customers is considered a "New Vehicle" unless such demonstration use has been for more than one thousand five hundred miles. Any motor vehicle or truck that has been titled and registered in Colorado or any other state or jurisdiction prior to purchase or lease is not a "New Vehicle."

(e) "Person" has the same meaning as in § 39-21-101(3), C.R.S.

(f) "Purchaser" means any Person that:

(i) Purchases or leases a Qualifying Vehicle or Qualifying Trailer; or

(ii) Modifies a motor vehicle, truck, or trailer that said Person owns or is in the process of purchasing.

(g)

(i) "Qualifying Conversion" means, with respect to a motor vehicle or truck that is titled and registered in accordance with paragraph (5) of this rule:

(A) The conversion of the motor vehicle into an "electric motor vehicle" or "plug-in hybrid electric motor vehicle" as those terms are defined in § 39-22-516.7(1)(k), C.R.S.;

(B) The conversion of the truck into an "electric truck" or "plug-in hybrid electric truck" as those terms are defined in § 39-22-516.8(1)(r), C.R.S.;

(C) A "compressed natural gas or liquefied petroleum gas conversion" as defined in §39-22-516.8(1)(g), C.R.S.;

(D) A "liquefied natural gas or hydrogen conversion" as defined in § 39-22-516.8(1)(i), C.R.S.; or

(E) The conversion of a truck with a gross vehicle weight rating of fourteen thousand pounds or greater into a "hydraulic hybrid truck" as defined in § 39-22-516.8(1)(v), C.R.S.

(ii) For the purpose of paragraphs (2)(g)(i)(C) and (D) of this rule and §§ 39-22-516.8(1)(g) and (i), C.R.S., the term "conversion" means any alteration of a motor vehicle/engine, its fueling system, or the integration of these systems, that allows the vehicle/engine to operate on a fuel or power source different from the fuel or power source for which the vehicle/engine was originally certified by the Environmental Protection Agency. For the purpose of paragraphs (2)(g)(i)(C) and (D) of this rule and §§ 39-22-516.8(1)(g) and (i), C.R.S., the term "conversion" shall be construed in a manner consistent with 40 C.F.R. Part 85.

(h) "Qualifying Device" means "aerodynamic technologies" or "idling reduction technologies" as defined in §§ 39-22-516.8(1)(b) or (w), C.R.S., respectively, installed on or in a truck that is titled and registered in accordance with paragraph (5) of this rule.

(i) "Qualifying Trailer" means a clean fuel refrigerated trailer as defined in § 39-22-516.8(1)(q), C.R.S. that is titled and registered in accordance with paragraph (5) of this rule.

(j)

(i) "Qualifying Vehicle" means a New Vehicle that is titled and registered in accordance with paragraph (5) of this rule and that is:

(A) An "electric motor vehicle" or "plug in hybrid electric motor vehicle" as those terms are defined in § 39-22-516.7(1)(k), C.R.S.;

(B) An "electric truck" or "plug-in hybrid electric truck" as those terms are defined in § 39-22-516.8(1)(r), C.R.S.;

(C) An "original equipment manufacturer truck that is equipped to operate on compressed natural gas or liquefied petroleum gas" as defined in §39-22-516.8(1)(f), C.R.S.; or

(D) An "original equipment manufacturer truck that is equipped to operate on liquefied natural gas or hydrogen" as defined in § 39-22-516.8(1)(h), C.R.S.

(ii) For the purpose of paragraphs (2)(j)(i)(C) and (D) of this rule and §§ 39-22-516.8(1)(f) and (h), C.R.S., the term "original equipment manufacturer" includes only the equipment covered by the original certification issued by the Environmental Protection Agency for the motor vehicle or truck. For the purpose of paragraphs (2)(j)(i)(C) and (D) of this rule and §§ 39-22-516.8(1)(f) and (h), C.R.S., the term "original equipment manufacturer" shall be construed in a manner consistent with 40 C.F.R. Part 85.

(3) **Qualifying Purchases, Leases, and Modifications.**

(a) The Credit is allowed to any Person that, in accordance with this rule and §§ 39-22-516.7 or 516.8, C.R.S.:

(i) Purchases or leases a Qualifying Vehicle;

(ii) Modifies a motor vehicle, truck, or trailer that said Person owns or is in the process of purchasing; or

(iii) Is a Financing Entity that accepts assignment of a Credit during the tax year pursuant to paragraph (11) of this rule.

(b) The Credit may not be claimed by the State of Colorado or any political subdivision thereof.

(4) **Nonqualifying Purchases, Leases, and Modifications.** No credit is allowed for:

(a) The purchase or lease of any used motor vehicle or truck;

(b) The purchase or lease of any motor vehicle or truck previously titled and registered in Colorado, another state, or any other jurisdiction;

(c) Any motorcycle or other motor vehicle or truck designed to travel with three or fewer wheels in contact with the ground; or

(d) Any compressed natural gas, liquefied petroleum gas, liquefied natural gas, or hydrogen conversions that are not certified by the environmental protection agency pursuant to 40 C.F.R. Parts 85 and 86.

(5) **Titling and Registration.** The Credit is allowed only with respect to motor vehicles, trucks, and trailers the Purchaser titles and registers in Colorado in accordance with § 42-3-103, C.R.S. or, in the case of trucks and trailers registered under the international registration plan, base plated in Colorado. For the purpose of this rule, a motor vehicle, truck, or trailer with an active "Temporary Registration Permit" as defined in 1 CCR 204-10, Rule 34, 1.3 is not considered registered in Colorado.

(a) *Purchases and leases of New Vehicles and trailers*. The purchase or lease of a motor vehicle, truck, or trailer qualifies for the Credit only if the Purchaser titles and registers the motor vehicle, truck, or trailer in accordance with this paragraph (5) in the time and manner prescribed by law. The purchase or lease of any motor vehicle or truck that was registered in any other state or jurisdiction prior to being registered in accordance with this paragraph (5) does not qualify for the credit.

(b) *Modifications of New Vehicles*. The Modification of a New Vehicle qualifies for the Credit only if the Purchaser titles and registers the New Vehicle in accordance with this paragraph (5) in the time and manner prescribed by law.

(c) *Modification of motor vehicles, trucks, and trailers that are not New Vehicles*. The Modification of a motor vehicle, truck, or trailer that is not a New Vehicle qualifies for the Credit only if, at the time of Modification, the Purchaser has titled and registered the motor vehicle, truck, or trailer in accordance with this paragraph (5).

(6) **Leases.**

(a) Except as otherwise provided in this rule, the Credit allowed for the lease of a Qualifying Vehicle or Qualifying Trailer is allowed to the lessee and not to the lessor.

(b) In order to qualify for the Credit a lease must be for a term of at least two years.

(c) Except as provided in paragraph (6)(c)(i) of this rule, if a lessee enters into a bona fide lease agreement of not less than two years, but terminates the lease early, such early termination will not abrogate the lessee's right to any allowable Credit or require any recapture of the allowable Credit claimed for the lease.

(i) In the case of the early termination of a lease for a Qualifying Trailer, the Purchaser must report and repay the credit recapture amount with the Purchaser's income tax return for the tax year in which the lease is terminated. The credit recapture amount is equal to the difference between the amount of the original Credit claim and the amount of the Credit recalculated based upon the actual cost incurred for the lease prior to its termination.

(7) **Multiple Purchasers, Lessors, and Owners.** In the case of a vehicle owned, purchased, or leased jointly by multiple Purchasers or by a partnership, S corporation, or other similar pass-through entity, the Credit allowable for the purchase, lease, or Modification may be allocated to the respective owners, partners, or shareholders in any manner they elect. The aggregate amount of the Credit allocated to such owners, partners, members, or shareholders for the purchase, lease, or Modification cannot exceed the Credit amount allowed by law for a single purchase, lease, or Modification.

(8) **Tax Year of Credit.**

(a) The Credit is allowed only for the tax year that includes the Date of Purchase, Lease, or Modification.

(b) In the case of assignment under paragraph (11) of this rule, the Financing Entity to which the Credit is assigned shall claim the assigned credit on the Financing Entity's tax return for the tax year that contains the Date of Purchase, Lease, or Modification.

(9) **Prohibition on Multiple Credits for Motor Vehicle, Truck, or Trailer.**

(a) Except as provided in § 39-22-516.7(5), C.R.S. and paragraph (9)(b) of this rule, no more than one Credit is allowed for the same motor vehicle, truck, or trailer, including for any conversion thereof.

(b) The limitation in paragraph (9)(a) of this rule shall not preclude the allowance of separate credits for multiple Qualifying Devices installed on or in the same truck.

(10) **Credits for Qualifying Trailers and Qualifying Devices.**

(a) The Credit allowed for a Qualifying Trailer or a Qualifying Device is a percentage, as set forth in § 39-22-516.8, C.R.S., of the actual cost incurred by the Purchaser.

(i) The actual cost incurred for the purpose of calculating the Credit for a Qualifying Device or for the purchase or conversion of a Qualifying Trailer, is defined under § 39-22-516.8(1)(a)(I), C.R.S. and is exclusive of any tax, titling and registration fees, or any other fees or charges extraneous to the direct cost of the Qualifying Device and installation thereof or for the purchase or conversion of the Qualifying Trailer.

(ii) The actual cost incurred for the purpose of calculating the credit for the lease of a Qualifying Trailer, is defined under § 39-22-516.8(1)(a)(II), C.R.S.

(b) The Credit(s) a Person may claim for one or more Qualifying Trailers or Qualifying Devices during the same tax year is subject to the limitations set forth in the table below.

	Limit per trailer or device	Limit per Person per tax year
Purchase or lease of Qualifying Trailer	$7,500	None
Conversion to Qualifying Trailer	$7,500	None
Aerodynamic technologies	$6,000	$50,000
Idling reduction technologies	$6,000	$6,000

(11) **Assignment of the Credit.**

(a) A Purchaser who obtains financing for the purchase or lease of a Qualifying Vehicle or Qualifying Conversion may, by mutual agreement with the entity financing the purchase, lease, or conversion, assign the Credit to the Financing Entity.

(b) For a Credit assigned under this paragraph (11) of this rule, the Financing Entity must compensate the Taxpayer for the full amount of the assigned Credit, less an administrative fee not to exceed one hundred fifty dollars that the Financing Entity may retain. Compensation must be made in the form of a cash payment, a reduction in the cash price, a capitalized cost reduction, or some similar consideration and must be reflected in the loan or lease agreement for the Qualifying Vehicle or Qualifying Conversion. Such compensation must be made effective on the date the election statement to assign the credit is executed and not applied at any subsequent date.

(c) In order to assign the Credit the Purchaser and Financing Entity must execute an election statement on the Date of Purchase, Lease, or Modification.

(i) The election statement must be executed using forms prescribed by the Department. The Financing Entity must retain a copy of the election statement in its records as prescribed in § 39-21-113, C.R.S.

(ii) Within 30 days of its execution, the Financing Entity must submit the information contained in the election statement to the Department in the electronic form the Department prescribes.

(A) If the Financing Entity fails to submit such information electronically within 30 days, and the Purchaser files a return claiming the Credit, in a manner consistent with statute and rule, the Credit will be allowed to the Purchaser and no Credit will be allowed to the Financing Entity. If the Financing Entity fails to submit such information electronically within 30 days, but electronically submits the required information prior to the filing of the Purchaser's return, the Credit will be allowed to the Financing Entity.

(d) The Financing Entity must file an income tax return for the tax year containing the Date of Purchase, Lease, or Modification in order to claim the assigned Credit. If the Financing Entity is included in a combined or consolidated return, the assigned Credit must be claimed on such combined or consolidated return. A copy of the election statement assigning the Credit must be submitted with the return. The Department shall not issue a refund for the assigned Credit to the Financing Entity prior to the filing of the Financing Entity's income tax return claiming the Credit.

(i) Irrespective of the Financing Entity's tax year, the amount of the Credit allowed is determined by the Purchaser's tax year that includes the Date of Purchase, Lease, or Modification.

(e) Any Credit assigned to a Financing Entity cannot be subsequently assigned to any other party, entity, or taxpayer. Only a Purchaser can assign a Credit to a Financing Entity. A Financing Entity can accept assignment of the Credit only from a Purchaser.

(f) A Credit will not be allowed to any Financing Entity for any motor vehicle, truck, or conversion that is not a Qualifying Vehicle or Qualifying Conversion, the execution of any election statement notwithstanding. A Credit will not be allowed to any Financing Entity for a motor vehicle or truck that is not titled and registered in accordance with paragraph (5) of this rule.

(g) The Financing Entity may authorize an agent or designee to act on its behalf to perform all functions appertaining to the assignment of the Credit.

(h) If assignment of the Credit has been made in full compliance with the provisions of this rule and §§ 39-22-516.7 or 516.8, as applicable, the Purchaser surrenders any right to claim the Credit. Any duly assigned Credit will not be considered either a payment or an overpayment of the Purchaser's tax and will not be applied pursuant to § 39-21-108(3), C.R.S., toward any tax liability or deficiency the Purchaser owes

Cross Reference(s)

1. Form DR 0618 – Innovative Motor Vehicle Credit - Election Statement.

2. Form DR 0617 – Innovative Motor Vehicle Credit and Innovative Truck Credit form.

~~3. See §§ 39-22-516.7 and 516.8, C.R.S. for the innovative motor vehicle credit and the innovative truck credit, respectively, for tax years commencing prior to January 1, 2017.~~

COLORADO DEPARTMENT OF REVENUE
OFFICE OF TAX POLICY

STATEMENT OF BASIS AND PURPOSE

Innovative Motor Vehicle and Innovative Truck Credits
Rule 39-22-516
1 CCR 201-2

Basis

The statutory bases for this rule are sections 39-21-112(1), 39-22-516.7, and 39-22-516.8, C.R.S.

Purpose

The purpose of the amendments to this rule is to provide additional guidance and clarification regarding the innovative motor vehicle and innovative truck credits and to update the rule to reflect changes made to the credits by House Bill 23-1272. The proposed rule:

- Advises that the credits are allowed to any person for the purchase or lease of a qualifying motor vehicle or qualifying truck and, for tax years commencing on or after January 1, 2024, to any tax-exempt person or political subdivision in Colorado for the purchase or lease of a qualifying motor vehicle or qualifying truck.
- Describes the conditions under which a motor vehicle or truck satisfies the statutory requirements that the motor vehicle or truck is new at the time of purchase or lease.
- Explains Colorado titling and registration requirements necessary to qualify for the credit and that any motor vehicle or truck titled or registered or both in any other state prior to being titled and registered in Colorado does not qualify for a credit.
- Identifies the tax year for which the credit is allowed based on the date on which the purchaser or lessee takes possession of the qualifying motor vehicle or truck.
- Provides guidance regarding the manufacturer's suggested retail price (MSRP) used in determining eligibility for the innovative motor vehicle credit and the additional credit allowed for tax years commencing on or after January 1, 2024, but before January 1, 2029, for qualifying motor vehicles with MSRPs under $35,000.
- Explains requirements applicable to leased motor vehicles and trucks, including the two-year minimum lease period and the treatment of leases terminated early.
- Describes requirements relating to credit assignment, including the compensation the assignee must provide the purchaser or lessee and the electronic report the assignee must file with the Department of Revenue.

Notice of Proposed Rulemaking

Tracking number

2023-00792

Department

200 - Department of Revenue

Agency

201 - Taxation Division

CCR number

1 CCR 201-2

Rule title

INCOME TAX

Rulemaking Hearing

Date

01/18/2024

Time

10:00 AM

Location

Virtual Hearing - See Comments

Subjects and issues involved

The purpose of this rule is to publish the amount of the refund allowed by section 39-22-2005, C.R.S., for the tax year commencing on January 1, 2023.

Statutory authority

The bases for this rule are sections 39-21-112(1) and 39-22-2005, C.R.S.

Contact information

Name

Josh Pens

Title

Director

Telephone

3038665627

Email

dor_taxrules@state.co.us

DEPARTMENT OF REVENUE

Taxation Division

INCOME TAX

1 CCR 201-2

Rule 39-22-2005. Refund of Remaining Excess Revenues from State Fiscal Year 2022-2023 Only.

Basis and Purpose. The bases for this rule are sections 39-21-112(1) and 39-22-2005, C.R.S. The purpose of this rule is to publish the amount of the refund allowed by section 39-22-2005, C.R.S., for the tax year commencing on January 1, 2023.

(1) For the income tax year beginning on January 1, 2023, the amount of the identical individual refund calculated pursuant to section 39-22-2005(2), C.R.S., is:

(a) in the case of a qualified individual filing a single return, $800; and

(b) in the case of two qualified individuals filing a joint return, $1,600.

COLORADO DEPARTMENT OF REVENUE
OFFICE OF TAX POLICY

STATEMENT OF BASIS AND PURPOSE

Refund of Remaining Excess Revenues from State Fiscal Year 2022-2023 Only
Rule 39-22-2005
1 CCR 201-2

Basis

The bases for this rule are sections 39-21-112(1) and 39-22-2005, C.R.S.

Purpose

The purpose of this rule is to publish the amount of the refund allowed by section 39-22-2005, C.R.S., for the tax year commencing on January 1, 2023.

Notice of Proposed Rulemaking

Tracking number

2023-00794

Department

200 - Department of Revenue

Agency

204 - Division of Motor Vehicles

CCR number

1 CCR 204-30

Rule title

DRIVER'S LICENSE-DRIVER CONTROL

Rulemaking Hearing

Date

01/24/2024

Time

03:00 PM

Location

Virtual

Subjects and issues involved

RULE 7 - RULES AND REGULATIONS FOR THE COMMERCIAL DRIVERS LICENSE (CDL) PROGRAM
The purpose of these rules is to promote the safety and welfare of the citizens of Colorado by establishing standards and requirements for licensing commercial drivers license testing units and testers, to establish fees for such licensing and maximum fees that may be charged by such testing units, to establish certain procedures and standards for issuing and possessing commercial drivers licenses, and to ensure compliance with state and federal requirements.

Statutory authority

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

Contact information

Name

Robert Baker

Title

Operations Manager

Telephone

303.913.5232

Email

robertm.baker@state.co.us

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

A. BASIS, PURPOSE, AND STATUTORY AUTHORITY

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

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

B. INCORPORATION BY REFERENCE OF FEDERAL LAW AND OTHER RULES

1) Adoption: The Department incorporates by reference the Federal Motor Carrier Safety Regulations ("FMCSR"), 49 CFR parts 171, 172, and 300-399, Qualifications and Disqualification of Drivers, 42 CFR part 73, 49 U.S.C. Section 5103, 49 U.S.C. Section 31310, and the Colorado Department of Public Safety, Colorado State Patrol, Rules and Regulations Concerning Minimum Standards for the Operation of Commercial Vehicles at 8 CCR 1507.1. Material incorporated by reference in this rule does not include later amendments to or editions of the incorporated material.

2) "49 CFR", when referenced in this rule, means the Federal Regulations published in the Code of Federal Regulations ("CFR"), Title 49, parts 171, 172, and 300-399 (February, 2022) by the National Archives and Records Administration's Office of the Federal Register and Government Publishing Office, and available at the original issuing agencies the Federal Motor Carrier Safety Administration and Pipeline and Hazardous Materials Safety Administration, both located at 1200 New Jersey Avenue SE, Washington, D.C., 20590. "42 CFR", when referenced in this rule, means the Federal Regulations published in the Code of Federal Regulations ("CFR"), Title 42, part 73 by the National Archives and Records Administration's Office of the Federal Register and Government Publishing Office, and available at the original issuing agencies the Federal Motor Carrier Safety Administration and Pipeline and Hazardous Materials Safety Administration, both located at 1200 New Jersey Avenue SE, Washington, D.C., 20590. 49 U.S.C. Sections 5103 and 31310, when referenced in this rule, means the United States Code, and are available at the U.S. Department of Transportation, located at 1200 New Jersey Avenue, SE, Washington, DC 20590. Rules and Regulations referenced or incorporated in this rule concerning minimum standards for the operation of commercial vehicles, 8 CCR 1507.1, are available at the original issuing agency headquarters, Colorado Department of Public Safety, Colorado State Patrol, Central Records Unit, 700 Kipling Street, Lakewood, CO 80214. The Federal statutes and State and Federal regulations referenced or incorporated in this rule are on file and available for inspection by contacting the Driver License Section of the Department of Revenue in person at, 1881 Pierce Street, Room 128, Lakewood, Colorado, 80214, or by telephone at 303-205-5600, and copies of the materials may be examined at any state publication depository library.

C. DEFINITIONS

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

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

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

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

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

6) CDL Vehicle Class: A group or type of vehicle with certain operating characteristics.

    a) Class A: Any combination of vehicles which has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more) whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,001 pounds) whichever is greater.

    b) Class B: Any single vehicle which has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), or any such vehicle towing a vehicle with a gross vehicle weight rating or gross vehicle weight that does not exceed 4,536 kilograms (10,001 pounds).

    c) Class C: Any single vehicle, or combination of vehicles, that does not meet the definition of Class A or Class B, but is either designed to transport 16 or more passengers, including the driver, or is transporting material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or is transporting any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

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

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

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

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

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

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

13) Drug and Alcohol Clearinghouse: is a secure online database that is owned and operated by the Federal Motor Carrier Safety Administration (FMCSA). The clearinghouse gives State Driver Licensing Agencies (SDLAs), State law enforcement, FMCSA, and employers of CDL drivers information about commercial driver drug and alcohol program violations, both prohibited status and return to duty status.

14) ELDT: Entry Level Driver Training - FMCSA's Entry Level Driver Training (ELDT) regulations set the baseline for training requirements for entry-level drivers. This includes those applying to obtain a Class A or Class B CDL for the first time, upgrade an existing Class B CDL to a Class A CDL or obtain a school bus (S), passenger (P), or hazardous materials (H) endorsement for the first time or if more than 10 years of non-CDL possession, refresher training is required from a registered training provider in the TPR.

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

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

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

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

    d) N = Tank vehicles

    e) P = CDL Passenger vehicle

    f) S = School buses

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

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

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

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

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

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

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

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

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

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

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

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

26) Modified Testing: A modified test is a skills tests that is required for a specific subject or skill set in a representative vehicle with certain provisions.

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

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

29) Prohibited Status: Information from the Drug and Alcohol Clearinghouse indicating that CLP or CDL holders or applicants may not lawfully operate a CMV because they violated the drug and alcohol use and testing prohibitions in 49 CFR part 382, subpart B.

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

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

a) E = No Manual Transmission

b) K = Intrastate only

c) L = No Air Brake equipped CMV

d) M = No Class A Passenger Vehicle

e) N = No Class A and B Passenger Vehicle

f) O = No Tractor-Trailer

g) P = No Passenger

h) X = No Liquid in Tank

i) V = Medical Variance (49 CFR)

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

32) Self-Certification Choice:

a) Non-excepted interstate. A person's certification that he or she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR and is required to be medically examined and certified pursuant to 49 CFR.

b) Excepted interstate. A person's certification must certify that he or she operates or expects to operate in interstate commerce but engages exclusively in transportation or operations excepted under 49 CFR from all or parts of the qualification requirements of 49 CFR and is therefore not required to be medically examined and certified pursuant to 49 CFR.

c) Non-excepted intrastate. A person's certification that he or she operates only in intrastate commerce and therefore is subject to Colorado driver qualification requirements.

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

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

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

35) USDOT: United States Department of Transportation.

D. DRIVER LICENSING REQUIREMENTS

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

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

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

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

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

a) Non-excepted interstate.

b) Excepted interstate.

c) Non-excepted intrastate.

d) Excepted intrastate.

3) Each applicant must meet the medical and physical qualifications under 49 CFR. Each applicant must have a valid medical examiner's certificate on file with the DMV and in their possession at all times during training and at the time of testing and, if applicable, any federal variance or state medical waiver or skills performance evaluation to a driver license office (49 CFR).

4) Each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division of the Department of Higher Education must affirm on an affidavit provided by the Department, to the testing unit that the initial applicant successfully passed training on the recognition, prevention, and reporting of human trafficking prior to taking the CDL skills test.

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

    a) Obtain a Class A or Class B CDL for the first time or if more than (10) years has passed since they held a CDL;

    b) Upgrade an existing Class B CDL to a Class A CDL; or

    c) Obtain a school bus (S), passenger (P), or hazardous materials (H) endorsement for the first time or if more than (10) years has passed since they held the respective endorsement.

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

6) Each applicant must be queried through the Drug and Alcohol Clearinghouse prior to issuing, renewing, transferring, or upgrading a CDL or issuing, renewing, or upgrading a CLP. Any applicant found to be in a "prohibited" status within the Drug and Alcohol Clearinghouse will be denied issuance of a CDL or CLP.

E. ENDORSEMENTS

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

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

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

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

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

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

F. RESTRICTIONS

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

    a) Operate a CMV outside Colorado state boundaries; or

    b) Transport interstate commerce as defined in 49 CFR.

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

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

    a) An individual may apply for removal of the "L" restriction after having successfully completed the air brake knowledge test and the CDL skills test in a vehicle equipped with air brakes that is representative of the CDL vehicle class. A modified test is also an option for this restriction removal. The vehicle inspection and road test segments must be successfully completed in a representative vehicle.

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

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

    a) An individual may apply for removal of the "E" restriction after having successfully completed the CDL skills test in a vehicle equipped with a standard transmission that is representative of the CDL vehicle class. A modified test is also an option for this restriction removal. The vehicle inspection and road test segments must be successfully completed in a representative vehicle.

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

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

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

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

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

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

a) An individual may apply for removal of the "O" restriction after having completed the CDL skills test in a tractor/semi-trailer combination vehicle equipped with a 5th wheel type coupling system. There are no modified skills tests for this restriction removal. Applicants must take the full CDL skills test.

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

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

a) The "P" restriction is removed by successfully completing the CDL skills test in a Passenger vehicle.

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

a) An individual may apply to have the "X" restriction removed after having successfully completed the CDL skills test.

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

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

a) The "Z" restriction is removed by successfully completing the air brake knowledge test and the CDL skills test in a vehicle equipped with air brakes that is representative of the CDL vehicle

class. There are no modified skills tests for this restriction removal. Applicants must take the full CDL skills test.

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

G. EXEMPTIONS

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

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

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

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

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

H. DRIVER LICENSE DISQUALIFICATIONS AND DOWNGRADES

1) Notification of "prohibited" status in the Drug and Alcohol Clearinghouse.

a) If a CLP or CDL holder or any driver who is required to hold a CLP or CDL, becomes listed as "prohibited" in the Drug and Alcohol Clearinghouse, the CDL or CLP status must be downgraded within 60 days of the notification of "prohibited" status. The CDL status will be downgraded to "eligible" on the driver's record. A downgrade removes the CLP or CDL privilege from the driver's license (for more details see § 383.5).

2) Disqualification for Major Traffic Offenses.

a) Any driver who holds or is required to hold a CDL or CLP is subject to disqualification of one year, three years, or lifetime disqualification as designated in paragraph (b) of § 383.51, if the holder drives a CMV or non-CMV and is convicted of the violations listed in that paragraph.

3) Disqualification for Serious Traffic Offenses.

a) Any driver who holds or is required to hold a CDL or CLP is subject to disqualification sanctions of 60 days or 120 days as designated in paragraph (c) of § 383.51, if the holder drives a CMV is convicted of two or more of the violations listed in that paragraph. For non-CMV convictions, the disqualification will only take place if the convictions result in the revocation or suspension of the CLP or CDL holders non-CMV driving privileges.

4) Disqualification for railroad-highway grade crossing offenses.

a) Any driver who holds or is required to hold a CDL or CLP is subject to disqualification sanctions of 60 days, 120 days, or 1 year as designated in paragraph (d) of § 383.51, if the holder drives a CMV or non-CMV and is convicted of the violations listed in that paragraph.

5) Disqualification for violating out-of-service orders.

a) Any driver who holds or is required to hold a CDL or CLP is subject to disqualification sanctions of 1 year or 5 years as designated in paragraph (e) of § 383.51, if the holder drives a CMV is convicted of the violations listed in that paragraph.

6) Invalid hazmat clearance.

a) If a CLP or CDL holder TSA clearance is no longer valid, the CDL or CLP status must be downgraded. The CDL status will be downgraded to “eligible” on the driver’s record. A downgrade removes the CLP or CDL privilege from the driver’s license.

7) Invalid Medical Examiner’s Certificate.

a) If a CLP or CDL holder medical certification is no longer valid, the CDL or CLP status must be downgraded pursuant to § 383.73 (o). The CDL status will be downgraded to “eligible” on the driver’s record. A downgrade removes the CLP or CDL privilege from the driver’s license.

8) Imminent Hazard.

a) Upon receipt of documentation from FMCSA under 49 CFR 386.72, the driver will be disqualified for the specified time listed.

9) Lifetime disqualification for human trafficking conviction.

a) If a CLP or CDL holder is convicted of using a CMV in the commission of a felony involving an act or practice of severe forms of trafficking in persons, as defined and described in 22 U.S.C. 7102(11), the driver will be disqualified from operating a CMV for life with no possibility of reduction of the term of such disqualification.

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

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

2) A CDL testing unit must enter into a written contract with the Department and agree to:

   a) Maintain an established place of business in Colorado and ensure all CMVs used for testing are properly registered, inspected for safe operating conditions at the time of exam and insured;

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

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

J. CDL TESTING UNIT REQUIREMENTS

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

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

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

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

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

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

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

4) Testing units must ensure that each examiner has a valid tester license issued by the Department when he or she administers a CDL skills test.

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

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

7) The testing unit must have written permission from the landowner to administer the CDL vehicle basic control skills exercises on areas not owned by the testing unit. This written permission must be submitted to the Department for approval prior to testing and renewed annually during the renewal process. If the testing unit owns the property, an updated Land Use Agreement is not necessary as long as the Department has a Land Use Agreement on file with the expiration date of "OWNED". Failure to have an updated Land Use Agreement can result in the skills lot being deactivated in CSTIMS to prevent testing until the updated Land Use Agreement is submitted to CDL Compliance.

8) The testing unit must maintain at least one employee who is licensed as a CDL examiner or contract with at least one person who is licensed as a CDL examiner.

9) The testing unit must ensure that the unit's examiner(s) follow the Department's standards for administering the CDL skills test.

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

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

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

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

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

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

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

14) The testing unit must schedule all tests utilizing CSTIMS. The testing unit or examiner must notify the CDL Compliance Unit of all canceled tests via CSTIMS as soon as the testing unit or examiner is aware of the cancellation. The testing unit or examiner must notify the Department of all tests scheduled or schedule changes via CSTIMS at least two (2) days in advance of the test. Tests not administered due to weather conditions, or a vehicle failure may be rescheduled with approval from a CDL Compliance Unit.

a) The testing unit is not permitted to schedule an applicant more than once within any two (2) day period.

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

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

15) The testing unit must ensure that:

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

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

c) The examiner uploads the correct score forms into CSTIMS.

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

e) The examiner must make sure that all third-party testing documents (including but not limited to score forms, contracts, insurances, and bonds) are kept secured in a locked cabinet in a room

or office that only the responsible parties of the testing unit, examiners or someone authorized by CDL Compliance, has access to at all times.

16) The testing unit must administer CDL skills tests only on Department approved testing areas and routes.

17) The testing unit must ensure all required portions of the CDL skills test are conducted during daylight.

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

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

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

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

c) Require all examiners to meet the same training and qualifications as state examiners, to the extent necessary to conduct CDL skills tests in compliance with these rules and regulations;

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

e) Gives the Department the right to take prompt and appropriate action against any testing unit or examiner when they fails to comply with department or federal standards or any other provisions in the contract or the rules and regulations up to and including suspension of the testing unit.

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

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

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

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

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

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

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

25) The testing unit must make sure that each examiner conducts and submits to CDL Compliance background checks for each examiner under their tester unit license, every 2 years during the mandatory seminar training. Not having updated background checks on examiners operating under the testing units license, will result in suspension of that examiner until cleared by CDL Compliance.

K. EXAMINER REQUIREMENTS

1) The examiner must possess a valid USDOT medical card and a valid CDL with the appropriate class and endorsement(s) to operate the vehicle(s) in which the CDL skills test is administered.

2) The examiner must conduct the full CDL skills test in accordance with Department procedures and must use the Colorado CDL Skill test Score Form.

3) The examiner must complete all CDL third-party testing forms correctly.

4) The examiner must administer all portions of the CDL skills test in English.

5) Interpreters are not allowed for any portion of the CDL skills test.

6) The examiner agrees to hold the State harmless from any liability arising from or in connection with a CDL skills test.

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

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

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

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

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

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

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

11) The examiner must administer the CDL skills test only on Department approved testing areas and routes.

12) The examiner must administer all three portions of the CDL skills test during daylight.

13) The examiner must ensure that the vehicle in which the CDL skills test will be administered is in proper working and mechanical order.

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

15) The Department may issue an examiner license to an examiner candidate upon the successful completion of the following requirements:

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

    b) The examiner candidate must be an employee of the testing unit submitting the application or under contract with the testing unit submitting the application.

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

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

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

ii) Complete the application for the fingerprint/background check.

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

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

17) An examiner may administer a CDL skills test on behalf of any licensed testing unit. The examiner may administer tests for more than one unit. However, for an examiner to conduct testing on the unit's behalf, the examiner must be an employee of the testing unit submitting the application or under contract with the testing unit submitting the application. The examiner must keep all CDL records separate for each testing unit.

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

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

20) The examiner must:

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

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

c) Upload the original correct score forms into CSTIMS.

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

e) The examiner must make sure that all third-party testing documents (including but not limited to score forms, contracts, insurances and bonds) are kept secured in a locked cabinet in a room or office that only the responsible parties of the testing unit, examiners or someone authorized by CDL Compliance, has access to at all times. Documents must be secured in a locked cabinet.

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

22) The examiner cannot administer the CDL skills test to an applicant with whom he/she has conducted in-vehicle skills training.

23) The examiner must ensure that each driver to be tested has met all applicable requirements with regard to ELDT.

24) Examiners must conduct and submit to CDL Compliance background checks every 2 years as part of their mandatory seminar training. Failure to do so will result in the examiner being suspended until cleared by CDL Compliance.

L. COURSE AND ROUTE REQUIREMENTS

1) A testing unit should have a paved area or a flat hard surface that is free of dirt, gravel, snow, ice or any debris for the CDL vehicle inspection and for the entire basic control skills exercise area that contain:

    a) Solid painted lines at least 4 inches in width and within (1) inch of the required dimensions with traffic cones marking the testing boundaries.

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

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

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

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

M. RIGHTS

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

2) Government s examiners who want to test outside of their governmental testing unit may make a written request to the CDL Compliance Unit and must receive approval from the CDL Compliance Unit prior to administering CDL skills tests outside of their governmental testing unit.

N. RECORDING AND AUDITING REQUIREMENTS

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

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

2) A testing unit must enter all (pass and fail) CDL skills test results into CSTIMS immediately after the test including the upload of the score form and, for each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division in the Department of Higher Education, a copy of the completed affidavit reflecting successful completion of training on the recognition, prevention, and reporting of human trafficking.
3) During CDL compliance audits and/or inspections, s examiners must cooperate with the Department and/or FMCSA by allowing access to testing areas and routes, furnishing CDL skills testing records and results, and providing other items pertinent to the mandated audit and/or inspection. The examiner must surrender testing records upon request.
4) If the testing unit provided the vehicle for the CDL skills test, the testing unit will furnish the vehicle for an applicant driver selected for a retest. No fees, including any vehicle rental fees required for testing, will be collected for this mandatory evaluation. The Department is not liable during retests for any damage, injury, or expense incurred.

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

O. BOND

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

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

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

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

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

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

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

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

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

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

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

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

    c) Falsification of test documents or results;

    d) Violations of CDL rules for testing units or s examiners;

e) Failure to employ a minimum of at least one licensed CDL examiner or contract with a minimum of one licensed CDL examiner;

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

g) Violations of the contract terms and conditions;

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

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

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

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

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

A. BASIS, PURPOSE, AND STATUTORY AUTHORITY

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

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

B. INCORPORATION BY REFERENCE OF FEDERAL LAW AND OTHER RULES

1) Adoption: The Department incorporates by reference the Federal Motor Carrier Safety Regulations ("FMCSR"), 49 CFR parts 171, 172, and 300-399, Qualifications and Disqualification of Drivers, 42 CFR part 73, 49 U.S.C. Section 5103, 49 U.S.C. Section 31310, and the Colorado Department of Public Safety, Colorado State Patrol, Rules and Regulations Concerning Minimum Standards for the Operation of Commercial Vehicles at 8 CCR 1507.1. Material incorporated by reference in this rule does not include later amendments to or editions of the incorporated material.

2) "49 CFR", when referenced in this rule, means the Federal Regulations published in the Code of Federal Regulations ("CFR"), Title 49, parts 171, 172, and 300-399 (February, 2022) by the National Archives and Records Administration's Office of the Federal Register and Government Publishing Office, and available at the original issuing agencies the Federal Motor Carrier Safety Administration and Pipeline and Hazardous Materials Safety Administration, both located at 1200 New Jersey Avenue SE, Washington, D.C., 20590. "42 CFR", when referenced in this rule, means the Federal Regulations published in the Code of Federal Regulations ("CFR"), Title 42, part 73 by the National Archives and Records Administration's Office of the Federal Register and Government Publishing Office, and available at the original issuing agencies the Federal Motor Carrier Safety Administration and Pipeline and Hazardous Materials Safety Administration, both located at 1200 New Jersey Avenue SE, Washington, D.C., 20590. 49 U.S.C. Sections 5103 and 31310, when referenced in this rule, means the United States Code, and are available at the U.S. Department of Transportation, located at 1200 New Jersey Avenue, SE, Washington, DC 20590. Rules and Regulations referenced or incorporated in this rule concerning minimum standards for the operation of commercial vehicles, 8 CCR 1507.1, are available at the original issuing agency headquarters, Colorado Department of Public Safety, Colorado State Patrol, Central Records Unit, 700 Kipling Street, Lakewood, CO 80214. The Federal statutes and State and Federal regulations referenced or incorporated in this rule are on file and available for inspection by contacting the Driver License Section of the Department of Revenue in person at, 1881 Pierce Street, Room 128, Lakewood, Colorado, 80214, or by telephone at 303-205-5600, and copies of the materials may be examined at any state publication depository library.

C. DEFINITIONS

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

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

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

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

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

6) CDL Vehicle Class: A group or type of vehicle with certain operating characteristics.

    a) Class A: Any combination of vehicles which has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more) whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,001 pounds) whichever is greater.

    b) Class B: Any single vehicle which has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), or any such vehicle towing a vehicle with a gross vehicle weight rating or gross vehicle weight that does not exceed 4,536 kilograms (10,001 pounds).

    c) Class C: Any single vehicle, or combination of vehicles, that does not meet the definition of Class A or Class B, but is either designed to transport 16 or more passengers, including the driver, or is transporting material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or is transporting any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

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

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

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

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

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

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

13) Drug and Alcohol Clearinghouse: is a secure online database that is owned and operated by the Federal Motor Carrier Safety Administration (FMCSA). The clearinghouse gives State Driver Licensing Agencies (SDLAs), State law enforcement, FMCSA, and employers of CDL drivers information about commercial driver drug and alcohol program violations, both prohibited status and return to duty status.

14) ELDT: Entry Level Driver Training - FMCSA's Entry Level Driver Training (ELDT) regulations set the baseline for training requirements for entry-level drivers. This includes those applying to obtain a Class A or Class B CDL for the first time, upgrade an existing Class B CDL to a Class A CDL or obtain a school bus (S), passenger (P), or hazardous materials (H) endorsement for the first time or if more than 10 years of non-CDL possession, refresher training is required from a registered training provider in the TPR.

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

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

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

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

    d) N = Tank vehicles

    e) P = CDL Passenger vehicle

    f) S = School buses

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

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

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

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

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

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

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

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

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

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

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

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

26) Modified Testing: A modified test is a skills tests that is required for a specific subject or skill set in a representative vehicle with certain provisions.

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

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

29) Prohibited Status: Information from the Drug and Alcohol Clearinghouse indicating that CLP or CDL holders or applicants may not lawfully operate a CMV because they violated the drug and alcohol use and testing prohibitions in 49 CFR part 382, subpart B.

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

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

a) E = No Manual Transmission

b) K = Intrastate only

c) L = No Air Brake equipped CMV

d) M = No Class A Passenger Vehicle

e) N = No Class A and B Passenger Vehicle

f) O = No Tractor-Trailer

g) P = No Passenger

h) X = No Liquid in Tank

i) V = Medical Variance (49 CFR)

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

32) Self-Certification Choice:

a) Non-excepted interstate. A person's certification that he or she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR and is required to be medically examined and certified pursuant to 49 CFR.

b) Excepted interstate. A person's certification must certify that he or she operates or expects to operate in interstate commerce but engages exclusively in transportation or operations excepted under 49 CFR from all or parts of the qualification requirements of 49 CFR and is therefore not required to be medically examined and certified pursuant to 49 CFR.

c) Non-excepted intrastate. A person's certification that he or she operates only in intrastate commerce and therefore is subject to Colorado driver qualification requirements.

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

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

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

35) USDOT: United States Department of Transportation.

D. DRIVER LICENSING REQUIREMENTS

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

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

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

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

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

a) Non-excepted interstate.

b) Excepted interstate.

c) Non-excepted intrastate.

d) Excepted intrastate.

3) Each applicant must meet the medical and physical qualifications under 49 CFR. Each applicant must have a valid ~~submit their~~ medical examiner's certificate on file with the DMV and in their possession at all times during training and at the time of testing and, if applicable, any federal variance or state medical waiver or skills performance evaluation to a driver license office (49 CFR).

4) Each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division of the Department of Higher Education must affirm on an affidavit provided by the Department, to the testing unit that the initial applicant successfully passed training on the recognition, prevention, and reporting of human trafficking prior to taking the CDL skills test.

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

    a) Obtain a Class A or Class B CDL for the first time or if more than (10) years has passed since they held a CDL;

    b) Upgrade an existing Class B CDL to a Class A CDL; or

    c) Obtain a school bus (S), passenger (P), or hazardous materials (H) endorsement for the first time or if more than (10) years has passed since they held the respective endorsement.

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

6) Each applicant must be queried through the Drug and Alcohol Clearinghouse prior to issuing, renewing, transferring, or upgrading a CDL or issuing, renewing, or upgrading a CLP. Any applicant found to be in a "prohibited" status within the Drug and Alcohol Clearinghouse will be denied issuance of a CDL or CLP.

E. ENDORSEMENTS

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

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

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

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

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

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

F. RESTRICTIONS

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

    a) Operate a CMV outside Colorado state boundaries; or

    b) Transport interstate commerce as defined in 49 CFR.

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

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

    a) An individual may apply for removal of the "L" restriction after having successfully completed the air brake knowledge test and the CDL skills test in a vehicle equipped with air brakes that is representative of the CDL vehicle class. A modified test is also an option for this restriction removal. The vehicle inspection and road test segments must be successfully completed in a representative vehicle.

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

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

    a) An individual may apply for removal of the "E" restriction after having successfully completed the CDL skills test in a vehicle equipped with a standard transmission that is representative of the CDL vehicle class. A modified test is also an option for this restriction removal. The vehicle inspection and road test segments must be successfully completed in a representative vehicle.

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

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

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

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

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

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

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

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

a) An individual may apply for removal of the "O" restriction after having completed the CDL skills test in a tractor/semi-trailer combination vehicle equipped with a 5th wheel type coupling system. There are no modified skills tests for this restriction removal. Applicants must take the full CDL skills test.

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

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

a) The "P" restriction is removed by successfully completing the CDL skills test in a Passenger vehicle.

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

a) An individual may apply to have the "X" restriction removed after having successfully completed the CDL skills test.

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

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

a) The "Z" restriction is removed by successfully completing the air brake knowledge test and the CDL skills test in a vehicle equipped with air brakes that is representative of the CDL vehicle class. There are no modified skills tests for this restriction removal. Applicants must take the full CDL skills test.

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

G. EXEMPTIONS

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

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

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

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

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

H. DRIVER LICENSE DISQUALIFICATIONS AND DOWNGRADES

1) Notification of "prohibited" status in the Drug and Alcohol Clearinghouse.

a) If a CLP or CDL holder or any driver who is required to hold a CLP or CDL, becomes listed as "prohibited" in the Drug and Alcohol Clearinghouse, the CDL or CLP status must be downgraded within 60 days of the notification of "prohibited" status. The CDL status will be downgraded to "eligible" on the driver's record. A downgrade removes the CLP or CDL privilege from the driver's license (for more details see § 383.5).

2) Disqualification for Major Traffic Offenses.

    a) Any driver who holds or is required to hold a CDL or CLP is subject to disqualification of one year, three years, or lifetime disqualification as designated in paragraph (b) of § 383.51, if the holder drives a CMV or non-CMV and is convicted of the violations listed in that paragraph.

3) Disqualification for Serious Traffic Offenses.

    a) Any driver who holds or is required to hold a CDL or CLP is subject to disqualification sanctions of 60 days or 120 days as designated in paragraph (c) of § 383.51, if the holder drives a CMV is convicted of two or more of the violations listed in that paragraph. For non-CMV convictions, the disqualification will only take place if the convictions result in the revocation or suspension of the CLP or CDL holders non-CMV driving privileges.

4) Disqualification for railroad-highway grade crossing offenses.

    a) Any driver who holds or is required to hold a CDL or CLP is subject to disqualification sanctions of 60 days, 120 days, or 1 year as designated in paragraph (d) of § 383.51, if the holder drives a CMV or non-CMV and is convicted of the violations listed in that paragraph.

5) Disqualification for violating out-of-service orders.

    a) Any driver who holds or is required to hold a CDL or CLP is subject to disqualification sanctions of 1 year or 5 years as designated in paragraph (e) of § 383.51, if the holder drives a CMV is convicted of the violations listed in that paragraph.

6) Invalid hazmat clearance.

    a) If a CLP or CDL holder TSA clearance is no longer valid, the CDL or CLP status must be downgraded. The CDL status will be downgraded to “eligible” on the driver’s record. A downgrade removes the CLP or CDL privilege from the driver’s license.

7) Invalid Medical Examiner’s Certificate.

    a) If a CLP or CDL holder medical certification is no longer valid, the CDL or CLP status must be downgraded pursuant to § 383.73 (o). The CDL status will be downgraded to “eligible” on the driver’s record. A downgrade removes the CLP or CDL privilege from the driver’s license.

8) Imminent Hazard.

    a) Upon receipt of documentation from FMCSA under 49 CFR 386.72, the driver will be disqualified for the specified time listed.

9) Lifetime disqualification for human trafficking conviction.

a) If a CLP or CDL holder is convicted of using a CMV in the commission of a felony involving an act or practice of severe forms of trafficking in persons, as defined and described in 22 U.S.C. 7102(11), the driver will be disqualified from operating a CMV for life with no possibility of reduction of the term of such disqualification.

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

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

2) A CDL testing unit must enter into a written contract with the Department and agree to:

a) Maintain an established place of business in Colorado and ensure all CMVs used for testing are properly registered, inspected for safe operating conditions at the time of exam and insured;

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

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

~~J~~I. CDL TESTING UNIT REQUIREMENTS

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

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

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

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

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

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

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

4) Testing units must ensure that each ~~driving tester~~ examiner has a valid tester license issued by the Department when he or she administers a CDL skills test.

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

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

7) The testing unit must have written permission from the landowner to administer the CDL vehicle basic control skills exercises on areas not owned by the testing unit. This written permission must be submitted to the Department for approval prior to testing and renewed annually during the renewal process. If the testing unit owns the property, an updated Land Use Agreement is not necessary as long as the Department has a Land Use Agreement on file with the expiration date of "OWNED". Failure to have an updated Land Use Agreement can result in the skills lot being deactivated in CSTIMS to prevent testing until the updated Land Use Agreement is submitted to CDL Compliance.

8) The testing unit must maintain at least one employee who is licensed as a CDL ~~driving tester~~ examiner or contract with at least one person who is licensed as a CDL ~~driving tester~~ examiner.

9) The testing unit must ensure that the unit's ~~driving tester(s)~~ examiner(s) follow the Department's standards for administering the CDL skills test.

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

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

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

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

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

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

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

14) The testing unit must schedule all tests utilizing CSTIMS. The testing unit or ~~driving tester~~ examiner must notify the CDL Compliance Unit of all canceled tests via CSTIMS as soon as the testing unit or ~~driving tester~~ examiner is aware of the cancellation. The testing unit or ~~driving tester~~ examiner must notify the Department of all tests scheduled or schedule changes via CSTIMS at least ~~three~~ two (~~3~~2) days in advance of the test. Tests not administered due to weather conditions, or a vehicle failure may be rescheduled with approval from a CDL Compliance Unit.

    a) The testing unit is not permitted to schedule an applicant more than once within any two (2) day period.

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

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

15) The testing unit must ensure that:

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

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

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

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

e) The ~~driving tester~~ examiner must make sure that all third-party testing documents (including but not limited to score forms, contracts, insurances, and bonds) are kept secured in a locked cabinet in a room or office that only the responsible parties of the testing unit, examiners or someone authorized by CDL Compliance, has access to at all times.

16) The testing unit must administer CDL skills tests only on Department approved testing areas and routes.

17) The testing unit must ensure all ~~three~~ required portions of the CDL skills test are conducted during daylight.

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

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

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

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

c) Require all ~~driving testers~~ examiners to meet the same training and qualifications as state examiners, to the extent necessary to conduct CDL skills tests in compliance with these rules and regulations;

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

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

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

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

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

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

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

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

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

25) The testing unit must make sure that each examiner conducts and submits to CDL Compliance background checks for each examiner under their tester unit license, every 2 years during the mandatory seminar training. Not having updated background checks on examiners operating under the testing units license, will result in suspension of that examiner until cleared by CDL Compliance.

~~KJ. DRIVING TESTER~~ EXAMINER REQUIREMENTS

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

2) The ~~driving tester~~ examiner must conduct the full CDL skills test in accordance with Department procedures and must use the Colorado CDL Skill test Score Form.

3) The ~~driving tester~~ examiner must complete all CDL third-party testing forms correctly.

4) The ~~driving tester~~ examiner must administer all portions of the CDL skills test in English.

5) Interpreters are not allowed for any portion of the CDL skills test.

6) The ~~driving tester~~ examiner agrees to hold the State harmless from any liability arising from or in connection with a CDL skills test.

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

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

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

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

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

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

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

11) The ~~driving tester~~ examiner must administer the CDL skills test only on Department approved testing areas and routes.

12) The ~~driving tester~~ examiner must administer all three portions of the CDL skills test during daylight.

13) The ~~driving tester~~ examiner must ensure that the vehicle in which the CDL skills test will be administered is in proper working and mechanical order.

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

15) The Department may issue an ~~driving tester~~ examiner license to an ~~driving tester~~ examiner candidate upon the successful completion of the following requirements:

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

b) The ~~driving tester~~ examiner candidate must be an employee of the testing unit submitting the application or under contract with the testing unit submitting the application.

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

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

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

ii) Complete the application for the fingerprint/background check.

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

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

17) An ~~driving tester~~ examiner may administer a CDL skills test on behalf of any licensed testing unit. The ~~driving tester~~ examiner may administer tests for more than one unit. However, for an ~~driving tester~~ examiner to conduct testing on the unit's behalf, the ~~driving tester~~ examiner must be an employee of the testing unit submitting the application or under contract with the testing unit submitting the application. The ~~driving tester~~ examiner must keep all CDL records separate for each testing unit.

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

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

20) The ~~driving tester~~ examiner must:

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

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

c) Upload the original correct score forms into CSTIMS.

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

e) The examiner must make sure that all third-party testing documents (including but not limited to score forms, contracts, insurances and bonds) are kept secured in a locked cabinet in a room or office that only the responsible parties of the testing unit, examiners or someone authorized by CDL Compliance, has access to at all times. Documents must be secured in a locked cabinet.

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

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

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

24) Examiners must conduct and submit to CDL Compliance background checks every 2 years as part of their mandatory seminar training. Failure to do so will result in the examiner being suspended until cleared by CDL Compliance.

L~~K~~. COURSE AND ROUTE REQUIREMENTS

1) A testing unit should have a paved area or a flat hard surface that is free of dirt, gravel, snow, ice or any debris for the CDL vehicle inspection and for the entire basic control skills exercise area that contain:

    a) Solid painted lines ~~that are~~ at least 4 inches in width and within (1) inch of the required dimensions ~~and~~ with traffic cones marking the testing boundaries.

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

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

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

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

M~~L~~. RIGHTS

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

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

N~~M~~. RECORDING AND AUDITING REQUIREMENTS

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

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

2) A testing unit must enter all (pass and fail) CDL skills test results into CSTIMS immediately after the test including the upload of the score form and, for each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division in the Department of Higher Education, a copy of the completed affidavit reflecting successful completion of training on the recognition, prevention, and reporting of human trafficking.
3) During CDL compliance audits and/or inspections, ~~driving testers~~ examiners must cooperate with the Department and/or FMCSA by allowing access to testing areas and routes, furnishing CDL skills testing records and results, and providing other items pertinent to the mandated audit and/or inspection. The ~~driving tester~~ examiner must surrender testing records upon request. ~~The driving tester may make copies and retain copies of such records.~~

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

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

O~~N~~. BOND

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

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

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

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

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

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

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

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

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

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

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

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

c) Falsification of test documents or results;

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

e) Failure to employ a minimum of at least one licensed CDL ~~driving tester~~ examiner or contract with a minimum of one licensed CDL ~~driving tester~~ examiner;

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

g) Violations of the contract terms and conditions;

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

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

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

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

Notice of Proposed Rulemaking

Tracking number

2023-00811

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

01/18/2024

Time

09:15 AM

Location

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

Subjects and issues involved

An amendment to Gaming Regulation 30-1099.44 in order to add a paragraph to the Regulation that was deleted in error during a former Rulemaking. Amendments to Gaming Rule 29 in order to clarify and expand on the requirements for responsible gaming and the gaming exclusion list, to establish Regulations for the exclusion or ejection of persons from any gaming establishment, as well as updates for the sake of consistency and clarification within the Rule.

Statutory authority

Sections 44-30-201, C.R.S., 44-30-202, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., 44-30-502, C.R.S., 44-30-510, C.R.S., 44-30-528, C.R.S., 44-30-531, C.R.S., 44-30-816, C.R.S., 44-30-818, C.R.S., 44-30-827, C.R.S., 44-30-833, C.R.S. and 44-30-1701, C.R.S., and 44-30-1702, C.R.S., and 44-30-1703, C.R.S.

Contact information

Name

Kenya Collins

Title

Director of Administration

Telephone

303-205-1338

Email

kenya.collins@state.co.us

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

30-1099.44 The play – WPT Heads Up Hold'em. *Effective 4/14/2015*

(6) At the discretion of the retail licensee, the five-card linked progressive wager may be configured in one of the two following ways: *Effective 3/2/22*

(a) The five-card linked progressive wager may be evaluated by forming a five-card hand with the player's two-card hand and the three community cards (the flop) dealt within the base game.

(B) THE FIVE-CARD LINKED PROGRESSIVE WAGER MAY BE EVALUATED BY FORMING A FIVE-CARD HAND WITH THE PLAYER'S TWO-CARD HAND AND THREE ADDITIONAL FIVE-CARD LINKED PROGRESSIVE COMMUNITY CARDS THAT ARE NOT USED WITHIN THE BASE GAME.

BASIS AND PURPOSE FOR RULE 29

The purpose of Rule 29 is to specify the requirements of licensees and responsible gaming, to designate certain duties of licensees and patrons related to self-restriction, to specify requirements concerning responsible advertising and promotions and to outline the process for involuntary exclusion from retail gaming establishments.

The statutory basis for Rule 29 is found in sections 44-30-201, C.R.S., 44-30-202, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., 44-30-502, C.R.S., 44-30-510, C.R.S., 44-30-528, C.R.S., 44-30-531, C.R.S., 44-30-827, C.R.S., 44-30-833, C.R.S. and 44-30-1701, C.R.S., and 44-30-1702, C.R.S., and 44-30-1703, C.R.S.

30-2904 Responsible advertising and promotions.

(1) All offers and bonuses must:

(a) Include terms and conditions that are full, accurate, clear, concise, transparent, and do not contain misleading information;

(b) Have advertising materials that include any material terms and conditions for that offer or bonus and have those material terms in close proximity to the headline claim of the offer or bonus and in reasonably prominent size;

(c) Not be described as free unless they absolutely are free. If the customer has to risk or lose their own money or has conditions attached to their own money, then the offer or bonus must disclose those terms;

(d) Not be described as risk free if the customer needs to incur any loss or risk their own money to use or withdraw winnings from the risk-free bet; ~~AND~~

(e) Not restrict the customer from withdrawing their own funds or withdrawing winnings from bets placed using their own funds~~.~~; AND

(f) Players that self-exclude shall not, while on the exclusion list, be able to redeem points, bonuses, comps or freeplay.

(2) Prohibition on advertising that targets underage participants:

(a) A retail gaming licensee and/or their marketing affiliates shall not target underage persons or create advertising content that is clearly meant, because of message and graphics, for an underage audience.

(b) A retail gaming licensee and/or their marketing affiliates shall not advertise on media where the majority of the demographic audience or players/performers are known to be under the legal age to gamble. This does not apply to public venues where the demographics of a normal crowd in attendance cannot be determined.

(3) Retail gaming licensees on or before October 1, 2023, and on or before October 1 each year thereafter shall submit to the Director a report that describes the efforts of the licensee in the preceding state fiscal year (July 1st through June 30th) to promote responsible gaming in the state via advertising and other promotional methods and the licensee's plans concerning such promotional efforts in the current state fiscal year~~:~~.

(4) RETAIL GAMING LICENSEES AND/OR THEIR MARKETING AFFILIATES SHALL INCLUDE A PROMINENT MESSAGE, WHICH STATES, "GAMBLING PROBLEM? CALL OR TEXT 1-800-GAMBLER" ON ALL FORMS OF MEDIA ADVERTISEMENT TO COLORADO CONSUMERS, INCLUDING BUT NOT LIMITED TO: ELECTRONIC MAIL (EMAIL), VIDEO ADVERTISEMENTS, DIGITAL/ONLINE ADVERTISING, TELEVISION ADVERTISEMENTS, RADIO ADVERTISEMENT, LETTERS, PAMPHLETS AND NEWSPAPER/MAGAZINE ADVERTISEMENTS. THE WRITTEN MESSAGE OF "GAMBLING PROBLEM? CALL OR TEXT 1-800- GAMBLER" SHALL APPEAR IN CONSPICUOUS AND LEGIBLE TYPE IN CONTRAST BY TYPOGRAPHY, LAYOUT, OR COLOR WITH ALL OTHER PRINTED MATERIAL ON THE ADVERTISEMENT. VERBAL MESSAGING OF "GAMBLING PROBLEM? CALL OR TEXT 1-800- GAMBLER" SHALL BE AUDIBLE AND UNDERSTANDABLE.

30-2905 Exclusion list – Duties and responsibilities

(1) Database creation.

The Division shall operate a program to consolidate excluded, self-excluded and prohibited individuals in one interactive database repository in order to keep those individuals from participating in Colorado gaming. The program shall provide an interactive protected database for retail gaming licensees, sports betting operations, sports leagues and individuals that participate in gaming in Colorado, AS WELL AS ANY

LICENSED THIRD-PARTY VENDORS PRE-APPROVED BY THE DIRECTOR OR THE DIRECTOR'S DESIGNEE WHICH CONTRACT WITH A LICENSEE OR SPORTS BETTING OPERATION. The sole purpose of the exclusion list and database is to ensure timely updates of individuals that may not participate in gaming for all gaming operations in Colorado. The exclusion list shall only be used for the purpose of identifying those individuals who are prohibited from gaming and those that may have excluded themselves because of their gambling problem. Licensees that receive data from the Division shall use it solely to update their database WHETHER DIRECTLY OR THROUGH A DIVISION-APPROVED THIRD-PARTY VENDOR. The information contained in the database and updates provided to the licensees are confidential and shall only be used for its intended purpose. Limited information may be shared with affiliates AND DIVISION-APPROVED THIRD-PARTY VENDORS for the purpose of ensuring ~~those identified~~ SELF-EXCLUDED INDIVIDUALS do not receive direct marketing. It is a violation for any licensee to use the confidential data in any other way. The Director shall determine how each licensee, league or individual interacts with the database.

(A) Retail gaming licensees shall, AS PART OF THEIR SELF-EXCLUSION AND RESPONSIBLE GAMING PROGRAM, make available a self-exclusion form to a patron requesting to self-exclude. THE ~~the~~ retail gaming licensee shall input the self-exclusion information provided through the secure Division portal, direct the PATRON~~player~~ to a dedicated computer on the licensee's property where the PATRON~~player~~ can access the Division's website directly ~~for~~ TO REQUEST self-exclusion or, if the portal is not available, direct the PATRON~~player~~ to the Division's website for self-exclusion at a later time.

(b) Retail gaming licensees that receive updates daily from the Division shall update all new excluded persons within their database WHETHER DIRECTLY OR THROUGH A DIVISION-APPROVED THIRD-PARTY VENDOR. THE ~~the~~ Director shall provide one or more excluded or prohibited PATRON/player lists to retail gaming licensees. DATA ~~data~~ records will be in a format detailed by the Director or THE DIRECTOR'S designee. The retail gaming licensee shall use best efforts to determine whether or not new and existing players club members or patrons are on an exclusion list either through the ~~casino's~~ LICENSEE'S own database or by checking the secure Division portal prior to issuing a player's card.

(c) Retail gaming licensees shall only update the Division database with self-excluded persons that have opted in after January 1, 2023, as determined by the Director. THE ~~the~~ retail gaming licensees shall make information for players that have self-excluded prior to January 1, 2023, upon request.

(D) A LICENSED THIRD-PARTY VENDOR MAY VIEW AND USE THE CONFIDENTIAL INFORMATION CONTAINED IN THE DIVISION'S EXCLUSION LIST AND DATABASE, SO LONG AS THE THIRD-PARTY VENDOR HAS COMPLIED WITH THE FOLLOWING:

(I) THE THIRD-PARTY VENDOR HAS ENTERED INTO A CONTRACT OR WRITTEN AGREEMENT WITH A LICENSEE OUTLINING THE THIRD-PARTY VENDOR'S ACCESS AND USE OF THE CONFIDENTIAL INFORMATION CONTAINED IN THE DIVISION'S EXCLUSION LIST AND DATABASE.

(II) THE THIRD-PARTY VENDOR HAS COMPLETED AND SUBMITTED A FORM PREPARED BY THE DIRECTOR OR THE DIRECTOR'S DESIGNEE. AS PART OF THE FORM, THE THIRD-PARTY VENDOR MUST DISCLOSE ALL RETAIL GAMING LICENSEES AND SPORTS BETTING OPERATIONS THAT IT IS PROVIDING SERVICES TO RELATED TO THE DIVISION'S EXCLUSION LIST AND DATABASE. AS PART OF THE FORM, THE THIRD-PARTY VENDOR MUST AFFIRMATIVELY AGREE NOT TO DISCLOSE THE CONFIDENTIAL INFORMATION CONTAINED IN THE DIVISION'S EXCLUSION LIST AND DATABASE, AND ALSO AGREE TO ONLY USE SUCH CONFIDENTIAL INFORMATION FOR ITS INTENDED PURPOSE.

(III) THE THIRD-PARTY VENDOR MAY NOT ACCESS AND/OR USE THE CONFIDENTIAL INFORMATION CONTAINED IN THE DIVISION'S EXCLUSION LIST AND DATABASE UNTIL APPROVED IN WRITING BY THE DIRECTOR OR THE DIRECTOR'S DESIGNEE.

(IV) THE THIRD-PARTY MUST IMMEDIATELY INFORM THE DIVISION OF ANY CHANGES TO ITS ADDRESS, ANY CHANGES TO ITS CONTRACT OR WRITTEN AGREEMENT WITH A RETAIL GAMING LICENSEE AND/OR SPORTS BETTING OPERATION, OR ITS CESSATION OF SERVICES RELATING TO THE PROVISION OF THIS REGULATION WITHIN FIVE (5) CALENDAR DAYS OF THE CHANGES OR CESSATION OF SERVICES.

(V) THE THIRD-PARTY VENDOR MUST IMMEDIATELY DISCLOSE TO THE DIVISION WITHIN FIVE (5) CALENDAR DAYS ANY DISCLOSURE OF THE CONFIDENTIAL INFORMATION CONTAINED IN THE DIVISION'S EXCLUSION LIST AND DATABASE OR INAPPROPRIATE USE OF SUCH CONFIDENTIAL INFORMATION. THE LICENSE WITH WHICH THE THIRD-PARTY VENDOR HAS CONTRACTED AND/OR ENTERED INTO A WRITTEN AGREEMENT MAY BE SUBJECT TO DISCIPLINE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 30 OF TITLE 44, C.R.S., AND/OR THE GAMING AND SPORTS BETTING RULES AND REGULATIONS UNDER 1 C.C.R. 207-1 AND 1 C.C.R. 207-2 RESPECTIVELY.

(2) Database inclusion.

(a) The following persons shall be included and maintained in the Division database, updated and transferred to retail gaming licensees ~~and~~, Sports Betting ~~Operators~~ OPERATIONS, AND LICENSED THIRD-PARTY VENDORS APPROVED BY THE DIRECTOR OR THE DIRECTOR'S DESIGNEE WHICH CONTRACT WITH A LICENSEE OR A SPORTS BETTING OPERATION:

(i) Individuals that have voluntarily self-excluded from any operator, retail casino or through the Division.

(ii) Sports betting individuals who are prohibited from placing wagers on certain sporting events to the extent that those individuals reside in the Division's exclusion list database.

(iii) Individuals who are required by the Commission to be excluded or ejected from licensed gaming establishments, to the extent that those individuals reside in the Division's exclusion list database.

(b) Persons on the exclusion and prohibited list may not participate or collect winnings from the gaming in Colorado on which they are prohibited. ~~Players~~ PATRONS that self-exclude shall not, while on the exclusion list, be able to redeem points, bonuses, comps or freeplay. ANY WINNINGS OF A PERSON ON THE EXCLUSION AND PROHIBITED LIST WILL BE RETAINED BY THE APPLICABLE LICENSEE OR OPERATOR. PERSONS ON THE EXCLUSION AND PROHIBITED LIST FORFEIT ANY MONEY WAGERED, BUT MAY RETAIN ANY REMAINING FUNDS THAT HAVE NOT BEEN ACTIVELY WAGERED IN CASINO GAMES OR SPORTS WAGERING AFTER BEING PLACED ON THE EXCLUDED OR PROHIBITED LIST.

(3) Inclusion on the exclusion list.

(a) Individual self-exclusion means that an individual has made a conscious voluntary effort to exclude themselves, from not only that form of gaming but from all forms of gaming under the regulatory purview of the ~~Colorado limited gaming control~~ Commission and the ~~Colorado~~ Division ~~of gaming~~. Self-exclusion may only be accomplished by an individual acting in their own interest, in the following ways:

(i) Self-exclusion by an individual through the Division ~~of gaming~~. ~~An~~ AN individual self-excluding either in person or through a web-based application. All self-exclusions by individuals through the Division, either in person or web-based, will have their identity verified prior to being included on the exclusion list.

(ii) Self-exclusion from an Internet Sports Betting operator. An individual who on an Internet sports betting mobile app chooses an option to electronically self-exclude, and has been directed to the Division's website.

(iii) Self-exclusion from a sports betting operator (retail sports book). An individual requesting self-exclusion from a retail sports book shall fill out a self-exclusion form provided by the sports book. The sports book shall enter the self-exclusion into the secure Division portal, direct the player to a dedicated computer on the licensee's property where the player can access the Division's website directly for self-exclusion or if the portal is not available direct the player to the Divisions website for self-exclusion at a later time.

(iv) Self-exclusion from a retail gaming licensee (casino). An individual requesting self-exclusion from a casino shall fill out a self-exclusion form provided by the casino. The casino shall enter the self-exclusion into the secure Division portal direct the player to a dedicated computer on the licensee's property where the player can access the Division's website directly for self-exclusion or if the portal is not available direct the player

to the Divisions website for self-exclusion at a later time. or use their electronic database procedure.

(b) Individuals wishing to self-exclude in person or through the Divisions web-based application shall fill out all required information on the form. Incomplete forms where an individual cannot be identified will not be processed.

(c) Individuals that self-exclude from gaming corporations that have gaming operations in other states may be included on their corporate exclusion list and may be included in other state exclusion programs. An individual self-excluding in Colorado shall be informed prior to being place on a corporate exclusion list.

(4) Exclusion period.

(a) Individuals that have voluntarily self-excluded from any sports betting operation, retail casino or through the Division shall select the period of exclusion to include:

(i) One (1) year

(ii) Three (3) years

(iii) Five (5) years

(b) An individual who is on the list may submit a request, to the Division, to increase the minimum length of exclusion.

(5) Removal from the exclusion list.

(a) Individuals that have self-excluded or are on the excluded list will need to fill out and file the form with the ~~Division of gaming~~ Director prior to being removed from the exclusion list. No person is automatically removed from the exclusion list when the selected or directed time period ends.

(b) Sports betting individuals who are prohibited from placing wagers on certain sporting events to the extent that those individuals reside in the Division's exclusion list database may be removed from the list by their governing body/league or by filling out and filing the form with the ~~Division of gaming's~~ Director.

(c) Individuals that are on the exclusion list and have not completed their self-selected period of self-exclusion may petition the ~~Division of gaming's~~ Director for removal from the list. The Division may require self-evaluation or evaluation by a professional to ensure the problem gambling or financial issues that led to the self-exclusion have corrected themselves. Removal from the exclusion list prior to the self-selected time period is at the complete discretion of the ~~gaming Division~~ Director. If an individual's petition to be removed from the exclusion list prior to the self-select exclusion period is not approved by the Director, the individual may not re-petition the Director again for the period of one year.

REGULATION 30-2907 EXCLUSION OR EJECTION OF PERSONS FROM ANY GAMING ESTABLISHMENT.

(1) The Division shall maintain an exclusion & ejection list ("Involuntary Exclusion List") of individuals who are excluded and may be ejected from licensed gaming establishments. The Involuntary Exclusion List shall be integrated into the database and/or list created under Regulation 30-2905(1) or as a separate list. The Division may share the Involuntary Exclusion List with retail gaming licensees and sports betting operators and may post the list on the Division's and/or the Commission's website.

(2) Inclusion on the Involuntary Exclusion List.

(A) The Division may initiate exclusion proceedings against an individual where it determines there is cause to believe the individual should be excluded and ejected from licensed gaming establishments under Article 30 of Title 44, C.R.S. Exclusion proceedings, as used herein, shall mean those procedures undertaken by the Division and the Commission to place individuals on the Involuntary Exclusion List. The Division shall initiate exclusion proceedings by filing a petition with the Commission. The petition must include the following information:

(I) The individual's name;

(II) The individual's date of birth;

(III) Any known aliases of the individual;

(IV) A picture of the individual, if available;

(V) A physical description of the individual;

(VI) A detailed description of why the individual should be excluded from all licensed gaming establishments; and

(VII) The requested effective date of an exclusion order.

(B) Upon receipt of a petition from the Division, the Commission shall consider the petition at a regularly scheduled or emergency public meeting, set at the discretion of the Commission chair or vice-chair.

(I) Following receipt of the petition and/or during its consideration of the petition, the Commission may request any additional information from the Division; any licensees with relevant information as determined by the Commission; or the individual at issue. The Commission's consideration of the petition is not an evidentiary hearing and any additional information requested by the Commission may only be offered or considered at the discretion of the Commission.

(C) In determining whether to add an individual to the Involuntary Exclusion List, the Commission may consider any of the following:

(I) Whether the individual's presence poses a threat to the interest of the State or licensed gaming, including members of the public;

(II) Whether the individual has a prior conviction of a felony, a misdemeanor involving moral turpitude, or a violation of the laws or gaming rules of any other state, the United States or any of its possessions or territories, or an Indian tribe;

(III) Whether the individual has violated, attempted to violate, or was involved in a conspiracy to violate the provisions of Article 30 of Title 44, C.R.S, relating to:

1. The failure to disclose an interest in a gaming establishment for which the individual must obtain a license or to make disclosures to the Commission; or

2. Intentional evasion of fees or taxes;

(IV) Whether the individual has a reputation that would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive influences;

(V) Whether the individual has prior exclusion(s) or ejection(s) from a gaming establishment under the laws or gaming rules of any other state, the United States or any of its possessions or territories, or an Indian tribe; or

(VI) Whether the individual is a career or professional offender or associates of career or professional offenders and any others as defined by rule of the Commission.

(D) Following receipt of the petition and consideration of above, the Commission shall either dismiss the petition or find the individual should be placed on the Involuntary Exclusion List.

(E) Where the Commission finds the individual should be placed on the Involuntary Exclusion List, the Commission shall:

(I) Determine the duration of the individual's inclusion on the Involuntary Exclusion List.

1. When the duration is not specifically designated, the default duration is permanent.

(II) PLACE ON THE INVOLUNTARY EXCLUSION LIST THE FOLLOWING:

1. THE INDIVIDUAL'S NAME;

2. THE INDIVIDUAL'S PHYSICAL DESCRIPTION;

3. A PICTURE OF THE INDIVIDUAL, IF AVAILABLE;

4. THE EFFECTIVE DATE OF THE INDIVIDUAL'S INCLUSION; AND

5. THE EXPIRATION DATE OF THE INDIVIDUAL'S INCLUSION.

(F) UNLESS A REQUEST FOR A HEARING IS SUBMITTED UNDER SUBSECTION (3) BELOW, THE INDIVIDUAL'S EXCLUSION HAS AN EFFECTIVE DATE OF THIRTY-FIVE (35) CALENDAR DAYS AFTER THE COMMISSION'S PLACEMENT OF THE INDIVIDUAL ON THE INVOLUNTARY EXCLUSION LIST. LICENSEES MUST EXCLUDE OR EJECT FROM THE LICENSED PREMISES ANY INDIVIDUAL ON THE INVOLUNTARY EXCLUSION LIST UPON THE EFFECTIVE DATE THE INDIVIDUAL'S EXCLUSION.

(3) CONTESTING PLACEMENT ON THE INVOLUNTARY EXCLUSION LIST.

(A) UPON THE COMMISSION PLACING THE NAME AND DESCRIPTION OF AN INDIVIDUAL ON THE INVOLUNTARY EXCLUSION LIST, THE COMMISSION SHALL SERVE A WRITTEN NOTICE OF THAT ACTION UPON THE INDIVIDUAL BY PERSONAL SERVICE, BY CERTIFIED MAIL SENT TO THE LAST-KNOWN ADDRESS OF THE INDIVIDUAL, OR BY PUBLICATION IN ONE OR MORE OFFICIAL NEWSPAPERS IN TELLER AND GILPIN COUNTIES.

(B) AN INDIVIDUAL PLACED ON THE INVOLUNTARY EXCLUSION LIST MAY PETITION THE COMMISSION FOR A HEARING WITHIN THIRTY (30) CALENDAR DAYS OF PERSONAL SERVICE OF THE WRITTEN NOTICE, THE DATE OF DELIVERY LISTED ON A CERTIFIED MAIL SENT TO THE LAST-KNOWN ADDRESS OF THE INDIVIDUAL, OR THE DATE OF PUBLICATION IN ONE OR MORE OFFICIAL NEWSPAPERS IN TELLER AND GILPIN COUNTIES. THE PETITION FOR HEARING MUST BE SUBMITTED IN WRITING TO 1707 COLE BLVD., SUITE 300, LAKEWOOD, CO 80401 AND MUST BE RECEIVED BY THE COMMISSION WITHIN THE THIRTY (30) DAY PERIOD TO BE CONSIDERED. THE COMMISSION MAY DELEGATE THE EVIDENTIARY HEARING TO ONE OF ITS MEMBERS OR AN ADMINISTRATIVE LAW JUDGE OR CONDUCT THE HEARING AS A WHOLE AT ITS DISCRETION.

(C) IF AN INDIVIDUAL REQUESTS A HEARING WITHIN THIRTY (30) CALENDAR DAYS, THE INDIVIDUAL'S NAME WILL NOT BE ADDED TO THE INVOLUNTARY EXCLUSION LIST PENDING THE OUTCOME OF THE EVIDENTIARY HEARING.

(D) IF THE INDIVIDUAL FAILS TO APPEAR FOR THE HEARING, THE PETITION FOR HEARING IS DEEMED ABANDONED AND THE INFORMATION FROM SUBSECTION (2)(E)(II) SHALL BE ADDED TO THE INVOLUNTARY EXCLUSION LIST.

(E) If an individual fails to request a hearing within thirty (30) calendar days, the placement of the individual on the Involuntary Exclusion List becomes a final agency order.

(4) Placement on the Involuntary Exclusion List on an emergency basis.

(A) The Division may initiate exclusion proceedings against an individual on an emergency basis. The Division shall supplement the petition with a detailed description of why placing the individual on the Involuntary Exclusion List on an emergency basis is necessary to avoid danger to the public safety and that public confidence and trust may only be maintained if the individual is listed on the Involuntary Exclusion List.

(I) With respect to the finding of danger to public safety, the Commission shall consider whether an individual has been listed on the list of persons to be excluded or ejected under the laws and gaming rules of the States of Nevada, New Jersey, or South Dakota or any other States; the United States or its territories or possessions; or an Indian tribe.

(B) Petitions for placing individuals on the Involuntary Exclusion List on an emergency basis may be considered by the Commission at a regularly scheduled meeting or emergency meeting, set at the discretion of the Commission chair or vice-chair.

(C) Upon the Commission placing the name and description of an individual on the Involuntary Exclusion List on an emergency basis, the Commission shall serve a written notice of that action upon the individual by personal service, by certified mail sent to the last-known address of the individual, or by publication in one or more official newspapers in Teller and Gilpin counties.

(I) An individual placed on the Involuntary Exclusion List on an emergency basis may petition the Commission in writing and/or email for a stay. The petition shall include an explanation of why a stay is appropriate and why the individual should not be added to the Involuntary Exclusion List on an emergency basis. The Commission chair or vice-chair shall determine whether or not to grant the stay pending the Commission' consideration of the issue under paragraph (4)(D).

(D) Within thirty (30) days after the placement of the name and description of an individual on the Involuntary Exclusion List on an emergency basis, the Commission shall consider whether to make the emergency listing permanent by setting the matter for consideration by the Commission in accordance with the process detailed in

PARAGRAPHS (2) THROUGH (3) ABOVE WITH THE EXCEPTION OF PARAGRAPH (3) (C).

(I) AN EMERGENCY LISTING MUST BE VACATED IF THE COMMISSION DETERMINES THAT THE INDIVIDUAL SHOULD NOT HAVE BEEN PLACED ON THE INVOLUNTARY EXCLUSION LIST.

(II) IF THE COMMISSION DETERMINES THE INDIVIDUAL SHOULD REMAIN ON THE INVOLUNTARY EXCLUSION LIST, THE INDIVIDUAL WILL REMAIN ON THE INVOLUNTARY EXCLUSION LIST WITHOUT BEING SUBJECT TO THE THIRTY-FIVE (35) CALENDAR DAY DELAY.

(5) IF AN INDIVIDUAL ON THE INVOLUNTARY EXCLUSION LIST IS FOUND GAMBLING, WAGERING OR SPORTS BETTING AT ANY LICENSED GAMING ESTABLISHMENT, THAT INDIVIDUAL SHALL BE EJECTED FROM THE LICENSED PREMISES. THE INDIVIDUAL IS NOT ENTITLED TO RECOVER AN JACKPOTS OR MONEY WAGERED. ANY MONEY NOT-YET WAGERED WILL BE RETURNED TO THE INDIVIDUAL.

(6) REMOVAL FROM THE INVOLUNTARY EXCLUSION LIST.

(A) AN INDIVIDUAL OR THROUGH A LEGAL REPRESENTATIVE ON THE INVOLUNTARY EXCLUSION LIST MAY PETITION THE COMMISSION FOR REMOVAL FROM INVOLUNTARY EXCLUSION LIST AFTER FIVE (5) YEARS OF THE EFFECTIVE DATE OF THE INDIVIDUAL'S PLACEMENT ON THE LIST.

(B) THE PETITION MUST INCLUDE THE FOLLOWING:

(I) THE PETITIONER'S NAME;

(II) DATE OR APPROXIMATE DATE OF THE EFFECTIVE DATE OF THE PETITIONER'S PLACEMENT ON THE INVOLUNTARY EXCLUSION LIST;

(III) THE FACTS AND CIRCUMSTANCES WHICH GIVE RISE TO THE REQUEST FOR REMOVAL FROM THE INVOLUNTARY EXCLUSION LIST, INCLUDING BUT NOT LIMITED TO AN EXPLANATION WHY THE REASONS FOR PLACEMENT ON THE INVOLUNTARY EXCLUSION LIST ARE NO LONGER APPLICABLE;

(IV) SIGNATURE OF PETITIONER; AND

(V) ADDRESS OF PETITIONER.

(C) UPON RECEIPT OF A PETITION, THE COMMISSION MAY REQUEST FROM THE PETITIONER ANY ADDITIONAL INFORMATION IT REQUIRES FOR THE ISSUANCE OF ITS ORDER. FOLLOWING RECEIPT OF THE PETITION, THE COMMISSION MUST EITHER DISMISS THE PETITION, CONSIDER THE MATTER AT A REGULARLY SCHEDULED PUBLIC MEETING SET AT ITS DISCRETION, OR ISSUE ITS DECISION WITHIN SIXTY (60) CALENDAR DAYS WHERE NO ADDITIONAL INFORMATION IS REQUESTED OR WHERE SUCH ADDITIONAL INFORMATION IS PROMPTLY PROVIDED.

THE COMMISSION WILL DENY A PETITION WHERE ADDITIONAL INFORMATION HAS BEEN REQUESTED AND HAS NOT BEEN PROVIDED BY A DATE SET BY THE COMMISSION.

(D) IF THE COMMISSION CONSIDERS THE MATTER AT A REGULARLY SCHEDULED PUBLIC MEETING, THE MATTER WILL BE CONSIDERED A DECISION ITEM NOT AN EVIDENTIARY HEARING, AND THE COMMISSION MAY RECEIVE COMMENTS AND PRESENTATIONS FROM THE PETITIONER, DIVISION REPRESENTATIVES AND/OR MEMBERS OF THE PUBLIC SOLELY AT THE COMMISSION'S DISCRETION.

Notice of Proposed Rulemaking

Tracking number

2023-00810

Department

200 - Department of Revenue

Agency

207 - Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-2

Rule title

SPORTS BETTING REGULATIONS

Rulemaking Hearing

Date

01/18/2024

Time

09:15 AM

Location

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

Subjects and issues involved

Amendments to Sports Betting Rule 9 in order to clarify and expand on the requirements for responsible gaming and the gaming exclusion list, as well as for the sake of consistency and clarification within the Rule.

Statutory authority

Sections 44-30-201, C.R.S., 44-30-202, C.R.S., 44- 30-203, C.R.S., 44-30-302, C.R.S., 44-30-502, C.R.S., 44-30-510, C.R.S., 44-30-528, C.R.S., 44-30-531, C.R.S., 44-30-827, C.R.S., 44-30-833, C.R.S. and 44-30-1701, C.R.S., and 44-30-1702, C.R.S., 44-30- 1703, C.R.S., and part 15 of article 30 of title 44, C.R.S.

Contact information

Name

Kenya Collins

Title

Director of Administration

Telephone

303-205-1338

Email

kenya.collins@state.co.us

DEPARTMENT OF REVENUE

Division of Gaming

SPORTS BETTING REGULATIONS

1 CCR 207-2

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

BASIS AND PURPOSE FOR RULE 9

The purpose of Rule 9 is to specify the requirements of Sports Betting Operations and responsible gaming, to designate certain duties of licensees and patrons related to self-restriction, and to specify requirements concerning responsible advertising and promotions. The statutory basis for Rule 9 is found in sections 44-30-201, C.R.S., 44-30-202, C.R.S., 44- 30-203, C.R.S., 44-30-302, C.R.S., 44-30-502, C.R.S., 44-30-510, C.R.S., 44-30-528, C.R.S., 44-30-531, C.R.S., 44-30-827, C.R.S., 44-30-833, C.R.S. and 44-30-1701, C.R.S., and 44-30-1702, C.R.S., 44-30- 1703, C.R.S., and part 15 of article 30 of title 44, C.R.S.

RULE 9 RESPONSIBLE GAMING AND SELF-RESTRICTION *Effective 4/14/20*

9.4 Responsible advertising and promotions.

(1) All offers and bonuses must:

(d) Not be described as risk free if the customer needs to incur any loss or risk their own money to use or withdraw winnings from the risk free bet; ~~AND~~

(e) Not restrict the customer from withdrawing their own funds or withdrawing winnings from bets placed using their own funds~~.~~; AND

(4) A SPORTS BETTING OPERATION AND/OR THEIR MARKETING AFFILIATES SHALL INCLUDE A PROMINENT MESSAGE, WHICH STATES, "GAMBLING PROBLEM? CALL OR TEXT 1-800- GAMBLER" ON ALL FORMS OF MEDIA ADVERTISEMENT TO COLORADO CONSUMERS, INCLUDING BUT NOT LIMITED TO: ELECTRONIC MAIL (EMAIL), VIDEO ADVERTISEMENTS, DIGITAL/ONLINE ADVERTISING, TELEVISION ADVERTISEMENTS, RADIO ADVERTISEMENT, LETTERS, PAMPHLETS AND NEWSPAPER/MAGAZINE ADVERTISEMENTS. THE WRITTEN MESSAGE OF "GAMBLING PROBLEM? CALL OR TEXT 1-800- GAMBLER" SHALL APPEAR IN CONSPICUOUS AND LEGIBLE TYPE IN CONTRAST BY TYPOGRAPHY, LAYOUT, OR COLOR WITH ALL OTHER PRINTED MATERIAL ON THE ADVERTISEMENT. VERBAL MESSAGING OF "GAMBLING PROBLEM? CALL OR TEXT 1-800- GAMBLER" SHALL BE AUDIBLE AND UNDERSTANDABLE.

9.5 Exclusion list – Duties and responsibilities.

(1) Database creation.

The Division shall operate a program to consolidate excluded, self-excluded and prohibited individuals in one interactive database repository in order to keep those individuals from participating in Colorado gaming. The program shall provide an interactive protected database for retail gaming licensees, Sports Betting Operations, sports leagues and individuals that participate in gaming in Colorado, AS WELL AS ANY LICENSED THIRD-PARTY VENDORS PRE-APPROVED BY THE DIRECTOR OR THE DIRECTOR'S DESIGNEE WHICH CONTRACT WITH A LICENSEE OR SPORTS BETTING OPERATION. The sole purpose of the exclusion list and database is to ensure timely updates of individuals that may not participate in gaming for all gaming operations in Colorado. The exclusion list shall only be used for the purpose of identifying those individuals who are prohibited

from gaming and those that may have excluded themselves because of a gambling problem. Licensees AND SPORTS BETTING OPERATIONS that receive data from the Division shall use it solely to update their database WHETHER DIRECTLY OR THROUGH A DIVISION-APPROVED THIRD-PARTY VENDOR. The information contained in the database and updates provided to the licensees are confidential and shall only be used for its intended purpose. Llimited information may be shared with affiliates AND DIVISION-APPROVED THIRD-PARTY VENDORS for the purpose of ensuring ~~those identified~~ SELF-EXCLUDED INDIVIDUALS do not receive direct marketing. It is a violation for any licensee to use the confidential data in any other way. The Director shall determine how each licensee, league or individual interacts with the database.

(a) Sports Betting Operations shall, as part of their self-exclusion and responsible gaming program~~.~~, make available to the player easily identifiable within the operators application, the link to the Division's website for self-exclusion. T~~t~~he link should take the player directly to that page from the application.

(b) The Division shall provide database records, sent electronically to the Sports Betting Operations. T~~t~~he Director shall provide one or more excluded or prohibited player lists to Sports Betting Operations. D~~d~~ata records will be in a format detailed by the Director or ~~their~~ THE DIRECTOR'S designee.

(c) Sports Betting Operations shall receive updates daily from the Division. Sports Betting Operations shall update all new excluded persons within their database.

(d) Sports Betting Operations shall receive the Division database with self-excluded persons that have opted in on or after January 1, 2023, as determined by the Director. T~~t~~he Sports betting operat~~OR~~ION shall make information for players that have self-excluded prior to January 1, 2023 upon request.

(E) A LICENSED THIRD-PARTY VENDOR MAY VIEW AND USE THE CONFIDENTIAL INFORMATION CONTAINED IN THE DIVISION'S EXCLUSION LIST AND DATABASE, SO LONG AS THE THIRD-PARTY VENDOR HAS COMPLIED WITH THE FOLLOWING:

(I) THE THIRD-PARTY VENDOR HAS ENTERED INTO A CONTRACT OR WRITTEN AGREEMENT WITH A LICENSEE OUTLINING THE THIRD-PARTY VENDOR'S ACCESS AND USE OF THE CONFIDENTIAL INFORMATION CONTAINED IN THE DIVISION'S EXCLUSION LIST AND DATABASE.

(II) THE THIRD-PARTY VENDOR HAS COMPLETED AND SUBMITTED A FORM PREPARED BY THE DIRECTOR OR THE DIRECTOR'S DESIGNEE. AS PART OF THE FORM, THE THIRD-PARTY VENDOR MUST DISCLOSE ALL RETAIL GAMING LICENSEES AND SPORTS BETTING OPERATIONS THAT IT IS PROVIDING SERVICES TO RELATED TO THE DIVISION'S EXCLUSION LIST AND DATABASE. AS PART OF THE FORM, THE THIRD-PARTY VENDOR MUST AFFIRMATIVELY AGREE NOT TO DISCLOSE THE CONFIDENTIAL INFORMATION CONTAINED IN THE DIVISION'S EXCLUSION LIST AND DATABASE, AND ALSO AGREE TO ONLY USE SUCH CONFIDENTIAL INFORMATION FOR ITS INTENDED PURPOSE.

(III) THE THIRD-PARTY VENDOR MAY NOT ACCESS AND/OR USE THE CONFIDENTIAL INFORMATION CONTAINED IN THE DIVISION'S EXCLUSION LIST AND DATABASE UNTIL APPROVED IN WRITING BY THE DIRECTOR OR THE DIRECTOR'S DESIGNEE.

(IV) THE THIRD-PARTY MUST IMMEDIATELY INFORM THE DIVISION OF ANY CHANGES TO ITS ADDRESS, ANY CHANGES TO ITS CONTRACT OR WRITTEN AGREEMENT WITH A RETAIL GAMING LICENSEE AND/OR SPORTS BETTING OPERATION, OR ITS CESSATION OF SERVICES RELATING TO THE PROVISION OF THIS REGULATION WITHIN FIVE (5) CALENDAR DAYS OF THE CHANGES OR CESSATION OF SERVICES.

(v) THE THIRD-PARTY VENDOR MUST IMMEDIATELY DISCLOSE TO THE DIVISION WITHIN FIVE (5) CALENDAR DAYS ANY DISCLOSURE OF THE CONFIDENTIAL INFORMATION CONTAINED IN THE DIVISION'S EXCLUSION LIST AND DATABASE OR INAPPROPRIATE USE OF SUCH CONFIDENTIAL INFORMATION. THE LICENSE WITH WHICH THE THIRD-PARTY VENDOR HAS CONTRACTED AND/OR ENTERED INTO A WRITTEN AGREEMENT MAY BE SUBJECT TO DISCIPLINE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 30 OF TITLE 44, C.R.S., AND/OR THE GAMING AND SPORTS BETTING RULES AND REGULATIONS UNDER 1 C.C.R. 207-1 AND 1 C.C.R. 207-2 RESPECTIVELY.

(2) Database inclusion.

(a) The following persons shall be included and maintained in the Division database, updated and transferred to Sports Betting Operations ~~and~~, retail gaming licensees, AND LICENSED THIRD-PARTY VENDORS APPROVED BY THE DIRECTOR OR THE DIRECTOR'S DESIGNEE WHICH CONTRACT WITH A LICENSEE OR A SPORTS BETTING OPERATION:

(b) Persons on the exclusion and prohibited list may not participate or collect winnings from the gaming in Colorado on which they are prohibited. Players that self-exclude shall not, while on the exclusion list, be able to redeem points, bonuses, comps or freeplay. ANY WINNINGS OF A PERSON ON THE EXCLUSION AND PROHIBITED LIST WILL BE RETAINED BY THE APPLICABLE LICENSEE OR OPERATOR. PERSONS ON THE EXCLUSION AND PROHIBITED LIST FORFEIT ANY MONEY WAGERED, BUT MAY RETAIN ANY REMAINING FUNDS THAT HAVE NOT BEEN ACTIVELY WAGERED IN CASINO GAMES OR SPORTS WAGERING AFTER BEING PLACED ON THE EXCLUDED OR PROHIBITED LIST.

(3) Inclusion on the exclusion list.

(a) Individual self-exclusion means that an individual has made a conscious voluntary effort to exclude themselves from not only that form of gaming but from all forms of gaming under the regulatory purview of the ~~Colorado limited gaming control~~ Commission and the ~~Colorado~~ Division ~~of gaming~~. Self-exclusion may only be accomplished by an individual acting in their own interest, in the following ways:

(i) Self-exclusion by an individual through the Division ~~of gaming~~. A~~A~~N individual self-excluding either in person or through a web-based application. All self-exclusions by individuals through the Division, either in person or web-based, will have their identity verified prior to being included on the exclusion list.

(iii) Self-exclusion from a sports betting operator (retail sports book). An individual requesting self-exclusion from a retail sports book shall fill out a self-exclusion form provided by the sports book. The sports book shall enter the self-exclusion into the secure Division portal, direct the player to a dedicated computer on the licensee's property where the player can access the Division's website directly for self-exclusion or if the portal is not available direct the player to the Divisions website for self-exclusion at a later time or use their electronic database procedure.

(iv) Self-exclusion from a retail gaming licensee (casino). An individual requesting self-exclusion from a casino shall fill out a self-exclusion form provided by the casino. The casino shall enter the self-exclusion into the secure Division portal direct the player to a dedicated computer on the licensee's property where the player can access the Division's website directly for self-exclusion or if the portal is not available direct the player to the Divisions website for self-exclusion at a later time or use their electronic database procedure.

(5) Removal from the exclusion list.

(a) Individuals that have self-excluded or are on the excluded list will need to fill out and file the form with the ~~Division of gaming~~ Director prior to being removed from exclusion list. No person is automatically removed from the exclusion list when the selected or directed time period ends.

(b) Sports betting individuals who are prohibited from placing wagers on certain sporting events to the extent that those individuals reside in the Division's exclusion list database may be removed from the list by their governing body/league or by filling out and filing the form with the ~~Division of gaming~~'s ~~-~~Director.

(c) Individuals that are on the exclusion list and have not completed their self-selected period of self-exclusion may petition the ~~Division of gaming's~~ Director for removal from the list. The Division may require self-evaluation or evaluation by a professional to ensure the problem gambling or financial issues that led to the self-exclusion have corrected themselves. Removal from the exclusion list prior to the self-selected time period is at the complete discretion of the ~~gaming Division~~ Director. If an individual's petition to be removed from the exclusion list prior to the self-select exclusion period is not approved by the Director, the individual may not re-petition the Director again for the period of one year.

Notice of Proposed Rulemaking

Tracking number

2023-00807

Department

300 - Department of Education

Agency

301 - Colorado State Board of Education

CCR number

1 CCR 301-32

Rule title

RULES FOR THE ADMINISTRATION OF THE COLORADO PRESCHOOL PROGRAM ACT

Rulemaking Hearing

Date

02/14/2024

Time

09:00 AM

Location

201 E. Colfax, Denver

Subjects and issues involved

The Colorado Preschool Program was eliminated with the creation of Universal Pre-K. Unfortunately, there was an error in the version filed with the Secretary of States Office. While CDE staff attempted to find other solutions to account for the error, it was determined that the rulemaking process needed to be repeated with the correct filing in order to fully repeal the rules.

Statutory authority

C.R.S. 26.5-4-201, et., seq.

Contact information

Name

Angela Maramba

Title

Director of State Board Relations

Telephone

7208224803

Email

Maramba_A@cde.state.co.us

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE COLORADO PRESCHOOL PROGRAM ACT

1 CCR 301-32

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

2404-R-1.00 Declaratory Orders Procedures

2228-R 1.00 Purpose of the Colorado Preschool Program

1.01 The primary purpose of these rules and regulations amended on March 6, 2003, is to assist districts in the implementation of the Colorado Preschool Program, Section 22-28-101 Colorado Revised Statute. The Colorado General Assembly and State Board of Education recognize that without the benefit of high quality early care and education support, there are children who are at risk of early school failure. The Colorado General Assembly, along with the Colorado State Board of Education, further recognize that such these services must be implemented in partnership with families and other community resources that serve families.

1.02 These rules and regulations are adopted by authority granted to the State Board of Education in Section 22-2-107(1)(c). Rule making authority is also granted in Sections 22-28-106, 22-28-107(2), and 22-28-108(1)(a) and (1)(b) C.R.S. All previous rules and regulations governing the Colorado Preschool Program are repealed upon adoption of these rules and regulations.

2228-R 2.00 Criteria for determining which school districts shall be eligible for participation in the Colorado Preschool Program

2.01 In order to determine which districts shall be eligible for participation in the Colorado Preschool Program the Colorado Department of Education shall consider those LEAs which provide the following information by September 15th of each year.

(1) The number of eligible children to be served by the district preschool program.

(2) The role of the District Council in identifying the need for the Colorado Preschool Program.

(3) Whether the district preschool program will be a nine-month or twelve-month program.

(4) Whether the district preschool program will be provided by the school district itself or provided, in whole or in part, by a head start agency or one or more child care agencies under contract with the school district.

(5) The number of schools in the school district or the number of head start agencies or child care agencies that would be involved in the district preschool program.

(6) The dropout rate of the school district.

(7) The test scores of children in kindergarten and the primary grades within the school district.

Style Definition: Title1

(8) The plan for involving parents and the community in the district preschool program.

(9) The demographic and geographic location of districts making application for participation in the program.

(10) If the district preschool program is to be provided by the school district:

(a) The number of schools in the school district that would be involved in the district preschool program;

(b) The number of additional personnel needed to staff the district preschool program;

(c) The training program for preschool teachers.

(11) If the district preschool program is to be provided in whole or in part, by a head start agency or child care agencies under contract with the school district:

(a) The head start agency or child care agencies with which the school district will contract;

(b) The terms of the contracts;

(c) The procedure to be used to monitor the district preschool program being provided to the school district by the head start agency or child care agencies;

(12) The extended day services, if any, to be provided in connection with the district preschool program;

(13) The programs required under this comprehensive plan as specified in 22-28-R-404.

2228-R 3.00 Criteria for selecting districts for participation in the Colorado Preschool Program from the pool of applicants

3.01 It is the intent of the Colorado General Assembly and the Colorado State Board of Education to fund those districts that demonstrate a use of collaboration with the community in order to assure effective use of resources in the program. While the Colorado Preschool Program only funds a part time program, those districts that can create full day quality care and education through the use of existing resources, will be given preference in the selection process. The following criteria shall be used to select districts:

(1) The role of the advisory council in developing the proposal. This includes the extent to which the council reflects the mandated roles, is reflective of the community and is involved in the community needs assessment;

(2) The need for the Colorado Preschool Program as demonstrated by the numbers of qualifying, unserved children;

(3) The geographic location of the community;

(4) The quality and comprehensiveness of the plan for coordinating the program with family support services for participating children and families;

(5) The quality and comprehensiveness of the plan for involving the parent or parents of each child enrolled in the program;

(6) The quality of the proposed parenting program including the use of such models as: Parents As First Teachers, Parents as Teachers, the Home Instruction Program for Parents of Preschool Youngsters or other validated models.

2228-R 4.00 The District Council

4.01 The District Council is responsible for determining the need for a Colorado Preschool Program. This includes surveying existing early care and education facilities to determine the existence of waiting lists. They can also determine any unmet need through contacts with other agencies such as social services and Resource and Referral. Upon completion of a district wide survey the District Council will recommend to the local school board whether or not a need exists and make a recommendation for or against applying for any available funds.

4.02 District Council Composition and Role

It is the responsibility of the superintendent to appoint members of the advisory council. The superintendent may appoint a designee to represent himself or herself. The superintendent shall appoint the following members:

(1) two parents of preschool children in the district preschool program or from an existing early childhood care and education program if the district does not have an existing program

(2) a representative from an agency responsible for health

(3) a representative from social services

(4) two representatives from the business sector

(5) a representative from an agency responsible for job training

(6) a representative from a publicly funded early childhood care and education facility

(7) a representative from a privately funded early childhood care and education facility

(8) Any other person(s) deemed appropriate by the superintendent such as: a kindergarten teacher, a principal, a representative from special education, a children's advocate, etc.

4.03 Members of the District Council are appointed for two year terms and may be reappointed at the discretion of the superintendent. Any vacancies on the District Council are filled by the superintendent. If such a vacancy occurs in a mandated role the person filling that vacancy must be representative of that role.

Once members are appointed to the District Council they will elect a chairperson. The chairperson will serve a one year term and may be reelected for a second year. The District Council shall meet a minimum of three times per year.

4.04 Comprehensive Plan

All participating districts must have a comprehensive Colorado Preschool Program plan for the delivery of services. The plan is developed by the District Council utilizing the expertise of its members and anyone else the council considers appropriate for the task. The Comprehensive Plan shall include the following elements:

(1) Quality of Program. This section deals with the ability of the program to outline a process through which they will meet the Colorado Department of Education Quality Standards for Early Childhood Services.

(2) Staff Development. This section addresses the identification of staff needs including delivering developmentally appropriate practice, teaching children who do not have English as a first language, involving parents, understanding and meeting the cultural needs of families and children. Plan should address how input from teachers about their educational needs are obtained and responded to.

(3) Family Involvement. This section addresses the agreements between program and family for involvement in the child's education and the role and expectations of the parents.

(4) Family Support Services. This section addresses the family support services that contribute to the health and well-being of the children. This includes:

(a) nutrition

(b) immunizations

(c) health care

(d) dental care

(e) social service programs

(f) mental health programs

(g) recreation opportunities

(5) The plan for coordinating the district preschool program with a parenting program.

4.05 Program Evaluation. This section addresses the design for this program evaluation including:

(1) child progress

(2) parent satisfaction

(3) the extent to which a comprehensive program is in place

(4) monitoring

4.06 The district shall file the Comprehensive Plan with the Colorado Department of Education.

4.07 Monitoring

The District Council is also responsible for monitoring its programs that serve children funded by the Colorado Preschool Program. The elements of monitoring must address:

(1) Compliance with all requirements of the Colorado Preschool Program;

(2) The extent to which programs are meeting the standards of developmentally appropriate practice as established by the Colorado Department of Education Quality Standards for Early Childhood Services;

(3) The degree to which parents are satisfied with their child's progress and their own involvement with the Colorado Preschool Program;

(4) The extent of the availability and use of additional services for the family.

4.08 Year End Report

The council shall document its monitoring and evaluation findings and make them available to Colorado Department of Education as part of their year end report. Such information shall be used by Colorado Department of Education in making its report to the General Assembly as required by 22-28-112, C.R.S. Any needs identified through monitoring by the council shall result in recommendations for improvement to the participating programs.

4.09 Role of the District Council in issuing a Request for Proposal

It is the responsibility of the District Council to develop and issue a Request for Proposal to the community at least once every five years. The following elements shall be present in the Request for Proposal:

(1) A clear criteria, consistent with the law, for selecting eligible children. All providers shall be knowledgeable about what factors qualify a child for the program.

(2) The capacity of the program to serve the eligible children. This includes staff qualifications and ability to deliver a quality program as set forth in the Colorado Department of Education Quality Standards for Early Childhood Services.

(3) The ability of the program to deliver parent support and parent involvement. This includes the extent to which the program collaborates with other agencies in order to provide an array of services to the family.

(4) The timelines for the start of the program services.

(5) The amount of funds to be awarded based upon the number of children served.

4.10 The District Council shall review all proposals received by the deadline set forth in the request. The District Council shall take measures so as to assure that there is no conflict of interest between those who are applying and those who are reviewing the proposals. After determining which proposals best meet or exceed the criteria, the District Council will make a recommendation to the local school board for funding. Final determination for funding is the responsibility of the local school board.

2228-R 5.00 Identification of eligible children

5.01 In order to be considered for eligibility, children must be 3, 4 or 5 years old. Four or five year olds must be eligible for kindergarten the following year and are not eligible for participation in the program for more than one year. Three year olds must lack school readiness that is attributable to at least three risk factors. Three year olds may participate in CPP as a four year old if they meet the eligibility requirements. It is the responsibility of kindergartens to be ready and serve all children who are eligible by birthdates established by the local education agency.

5.02 The local education agency is responsible for assuring that the children counted for funding in Colorado Preschool Program are eligible for participation. The Act established eligibility criteria that includes the following factors:

(1) The presence of significant family risk factors that relate to a child's development. These risk factors include the following:

(a) an abusive adult residing in the home of the child

(b) Either parent of the child was less than eighteen years of age and unmarried at the time of the birth of the child.

(c) The child is eligible to receive free or reduced-cost lunch pursuant to the provisions of the federal "National School Lunch Act", 42 U.S.C. SEC. 1751 ET SEQ.;

(d) The child's parent or guardian has not successfully completed a high school education or its equivalent.

(e) frequent relocation by the child's family to new residences

(f) homelessness of the child's family

(g) poor social skills of the child

(h) drug and/or alcohol abuse in the CHILD'S family

(2) The child is in need of language development, including but not limited to the ability to speak English.

5.03 Children are eligible if they are receiving services from the State Department of Social Services pursuant to Article 5 of Title 26, C.R.S., as neglected or dependent children.

5.04 All local school districts must have available a list of risk factors utilized for the purpose of identifying children. When programs are monitored for compliance, local educational agencies shall be able to justify children being counted for funding as meeting the criteria. Local educational agencies may expand the list of risk factors in order to meet the unique needs of the community.

5.05 In order to participate in the Colorado Preschool Program, the parent(s) or legal guardian shall enter into an agreement about their responsibilities to the educational program of their child with the program that is providing the services. Children cannot participate unless such an agreement is made. The agreement may be formal or informal.

5.06 LEAs or designated providers must have in writing a plan that addresses parent involvement. Programs are encouraged to form agreements with families based upon the needs and abilities of the family.

5.07 If families fail to live up to their agreements, providers may dismiss the child from the program. This should be done only after all other attempts, including modification of the agreement, have been attempted.

5.08 Any child qualifying for similar services under other programs (i.e., special education) would continue to be eligible only for such services and would be funded under such programs.

2228-R 6.00 The Program

6.01 The Colorado General Assembly established the Colorado Preschool Program based upon research that indicates that young children who experience a high quality preschool program have greater success in their education than comparable children who do not. The key is high quality. It is not appropriate to have or to contract with a program that does not demonstrate the capacity to deliver high quality developmentally appropriate services as measured by the Colorado Department of Education Quality Standards for Early Childhood Services.

6.02 Licensing

The Colorado General Assembly has determined in that all Colorado Preschool Programs must comply with the Colorado rules and regulations for child care centers promulgated by the Department of Social Services pursuant to section 26-6-106, C.R.S. Full-day kindergarten programs funded by the Colorado Preschool Program are not required to be in compliance with these rules.

6.03 Program Standards

The Act requires the Colorado Department of Education to set program standards using nationally accepted standards. The State Board of Education shall approve the Colorado Department of Education Quality Standards for Early Childhood Services program standards. Furthermore, the Colorado Department of Education strongly encourages that all programs receiving funds under the Act be accredited by the National Association for the Education of Young Children.

6.04 There are basic elements of quality that are:

(1) Class size. The maximum number of pupils in a district preschool program shall not exceed sixteen. The adult child ratio is one to eight. An adult can be a paraprofessional, a parent, a speech/language therapist, a senior citizen or other appropriate adult figure.

(a) When programs are required to limit class sizes to ten children in accordance with public health guidelines and safety measures, the adult child ratio may be increased to one to ten.

(2) Frequency of contact. Classes are to be held for four half days per week or the equivalent. The remaining one-half day is to be used for home visits, staff development, or planning.

(3) Learning Plans. Each child shall have an individual learning plan. The plan shall include identification of the child's needs in the following areas:

(a) language

(b) cognition

(c) gross motor

(d) fine motor

(e) social skills/self-esteem

6.05 Family Involvement. The plan will include strategies for parents to use at home with their child. The district shall provide for the parents any necessary materials or work.

6.06 Staff Qualifications. Teacher skills are the key element to the delivery of services. The Act does not require a teacher to be certified in early childhood care and education because of the differing requirements in Head Start, private child care and public schools.

It is necessary, however, to insure that the teacher has the appropriate skills necessary to teach young children. Any teacher must be able to show that they have received education credits in the field of early childhood. This can be done through a portfolio that demonstrates knowledge in:

(1) Early childhood development;

(2) Applying developmentally appropriate practice in the classroom (National Association for the Education of Young Children);

(3) Knowledge of multicultural education;

(4) Understanding parents partnerships.

6.07 If the teacher cannot demonstrate skills in the above areas, they must be supervised by someone who can and they must be making progress in the areas of need as part of their staff development.

2228-R 7.00 Reporting Requirements

7.01 The Colorado General Assembly requires the Colorado Department of Education to submit annually a report on the status of Colorado Preschool Program. The Colorado Department of Education shall use the information required in the annual reapplication for participation in the Colorado Preschool Program as the basis of that report. In addition, each district council is required to select methods for measuring and reporting child progress. Such methods may include portfolio assessment. Districts are discouraged from using standardized tests as a means of measuring progress. Colorado Department of Education may request a report on child progress from districts as part of the final report.

7.02 In addition, the Colorado Department of Education may require a report on parent involvement and year end satisfaction with the program. Colorado Department of Education will make any data collection requirements for the final report known to all participating districts by March of the program year.

Editor's Notes

History

Rule 6.04(1) eff. 08/30/2020.

Notice of Proposed Rulemaking

Tracking number

2023-00808

Department

300 - Department of Education

Agency

301 - Colorado State Board of Education

CCR number

1 CCR 301-39

Rule title

RULES FOR THE ADMINISTRATION OF THE PUBLIC SCHOOL FINANCE ACT OF 1994

Rulemaking Hearing

Date

02/14/2024

Time

09:00 AM

Location

201 E. Colfax, Denver

Subjects and issues involved

The Colorado Department of Education (CDE) staff developed proposed School Finance Rules. These proposed rules are a culmination of work from the past two and a half years, as we have worked to learn from the new education opportunities that evolved over the past several years and ensure that other relevant and engaging opportunities can be included for student funding. These rule revisions aim to provide greater flexibility to expand the use of and fundability of alternative instructional models including blended learning, and ensure appropriate guardrails, oversight, and protections to ensure quality outcomes. The proposed rules include several other changes. As the rules have not been substantially updated since 2012, there are other needed updates to align with current practice and provide more clarity.
Through the rule drafting process, the following principles guided our work:

Statutory authority

These rules are adopted pursuant to the authority in section 22-54-103(10) & (10.5), -104,(5)(c)(IV), -120, and -129,(6), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101, et seq, C.R.S.

Contact information

Name

Angela Maramba

Title

Director of State Board Relations

Telephone

7208224803

Email

Maramba_A@cde.state.co.us

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE PUBLIC SCHOOL FINANCE ACT OF 1994

1 CCR 301-39

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

Statement of Basis and Purpose

These rules are adopted pursuant to the authority in section 22-54-103(10) & (10.5), -104, ~~-108-109(5)(c)(IV)~~, -120, and -129~~, -402(6)~~, C.R.S., and ~~is~~ 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 purpose of these Rules is to:

~~Establish~~ establish regulations and procedures for administration of the Public School Finance Act of 1994, including ~~the~~ (but not limited to) procedures for revocation or withholding of school district accreditation for Act violations~~,~~; determination of district pupil membership ~~and~~, enrollment, and district at-risk funding~~,~~; English Language Learner funding; and assignment of cost of living factors in the event of district reorganizations~~.~~;

~~Assure~~implementing funding for approved facility schools and state programs; coordinating these rules with the administration of the Exceptional Children Educational Act (article 20 of Title 22, C.R.S.); and assuring the pupil count associated with the Public School Finance Act of 1994 fairly distributes funding to school districts to provide continuing instructional services.

~~Establish regulations and procedures regarding out-of-district-placed pupils and coordinate the collection of per pupil operating revenues with approval of facilities as on-grounds schools.~~

~~Coordinate these rules with regulations governing the administration of the Exceptional Children Educational Act (article 20 of Title 54, C.R.S.).~~

~~**1.00 Definitions**~~

1. Definitions

1.01 "Alternative teacher-pupil instruction" means the organized instruction of educational content for pupils enrolled in a brick-and-mortar public school under the supervision of a licensed educator that may take place asynchronously. The term includes any instruction not meeting the definition of direct teacher-pupil instruction, including but not limited to independent study, work study, internships, apprenticeships, blended learning, and supplemental online learning.

1.02 "Applicable count date" means the ~~collection of per~~ pupil ~~operating revenues with approval of facilities as on-grounds schools. Coordinate~~enrollment count date under section 3 of these rules ~~with regulations governing~~or, if approved by the ~~administration of~~Department, the alternative count date under section 4 of these rules. ~~Exceptional Children Educational Act (article 20 of Title 54, C.R.S.).~~

~~1.005~~ 1.03 "BOCES" means a board of cooperative services pursuant to Article 5 of Title 22, C.R.S.

1.04 "Catalog of Courses Using Alternative Teacher-Pupil Instruction" means a listing of alternative teacher-pupil instruction courses that are eligible for student enrollment by a district, BOCES, innovation school, innovation zone, or charter school.

1.04 (a) The catalog of courses using alternative teacher-pupil instruction must include a listing of courses, a description of each of the courses or identification of course provider if applicable, and the equivalent amount of instructional time or credit equivalent for work study, internships, and apprenticeships, that the course will count towards determining funding eligibility. The district must provide the basis for assigning equivalency for alternative teacher-pupil instruction courses, such as identifying the brick and mortar school and associated bell schedule on which the equivalency is based.

1.04 (b) The equivalent amount of instructional time assigned to courses using alternative teacher-pupil instruction shall not be more than 10% greater than the instructional time applied to fully-in person courses/bell schedules used for assigning equivalency.

1.04 (c) Courses using alternative teacher-pupil instruction may have certain content knowledge prerequisites, but otherwise must be offered and available for all eligible public school pupils at appropriate grade levels.

1.~~007~~ 05 "Commissioner" means the commissioner of education.

1.~~01~~06 "District" means any public school district organized under the laws of Colorado, except a junior college district. "District" includes a BOCES, innovation school, innovation zone, charter school, or other entity when said entity has legal responsibility for the applicable school calendars and student schedules .

1.~~02~~07 "Department" means the Colorado Department of Education.

~~2.00~~1.08 "Direct teacher-pupil instruction" means the organized instruction of educational content for pupils enrolled in public schools under the supervision of a licensed educator that takes place synchronously, when the licensed educator and the pupil are in the same physical location, such as a school building, or when the licensed educator and the pupil are in the same virtual classroom.

1.08(a) For the purpose of these rules, "synchronous" refers to instruction which occurs during scheduled times and includes real-time interactions between teacher and pupils in-person, by video, or by phone. "Asynchronous" refers to instruction which, by contrast, the teacher and the pupils engage with the educational content at different times.

1.~~03~~09 "Home-bound pupil" means a pupil who cannot receive instruction in a school setting due to a temporary or permanent condition or status.

~~1.04 "Homestudy~~1.10 "Home school pupil" means a pupil receiving a non-public home-based educational program pursuant to Section 22-33-104.5, C.R.S.

1.11 "Licensed educator" or "licensed teacher" means a teacher with an active Colorado educator credential. A licensed teacher may also include any teacher of record when the district has a waiver from Section 22-63-201, C.R.S..

1.~~05~~12 "Local board" means the board of education of a district~~,~~ or the board of a BOCES, ~~or a~~ charter school, ~~board, as appropriate.~~ innovation school, innovation zone, or other entity when said entity has legal responsibility for the applicable school calendar and student schedule

~~1.06 "Independent study" means a program established by a local board under the supervision of a licensed or certificated teacher, as defined by the local board and included in the student's academic~~

~~schedule. The student may be receiving all or a portion of his or her educational instruction through independent study.~~

1.~~07~~13 "Major Religious Holiday," for purposes of identifying a statewide pupil enrollment count, means a day or days on which approximately two (2) percent of the state's K-12 pupil population is likely to be absent in order to observe a religious holiday. The Department will identify the percentage of ~~students~~ pupils likely to observe a religious holiday based on the most current religious demographic data available from a reliable research organization, such as the Association of Religious Data Archives or The Pew Research Center's Forum on Religion and Public Life.

1.14 Parent led or parent directed instruction means the parent is substantially or primarily responsible for establishing the content of the required program of planned instruction and activities, selecting course curriculum, leading such instruction and activities, and/or directly evaluating student progress in the class. For example, even if there is a teacher of record communicating with the parent, it will still be parent-led or parent-directed if it meets the above definition.

~~1.08~~

1.15 "Private school pupil" means a pupil enrolled in an independent or parochial school which provides a basic academic education pursuant to Section 22-33-104(2)(b), C.R.S.

1.16 "Pupil" means ~~a person~~, except as otherwise provided in Section 22-2-402(7) or Articles 20 and 28 of Title 22, C.R.S, a student (1) under age 21 as of October 1 of the ~~pupil enrollment count date or the alternative count date~~applicable budget year who has not met the graduation requirements of ~~his/her~~ the district as of the ~~pupil enrollment count date or~~ applicable count date, and (2) at least age five as of October 1 of the ~~alternative count date~~applicable budget year.

~~1.09 "Semester" means one-half of the school year.~~

~~1.10~~1.17 "Semester" means the total number of scheduled student contact days for the school year as documented by the district's adopted board calendar, plus an additional three days (as described in section 22-32-109(1)(n)(II)(A)), divided by two.

1.18 "State Board" means the state board of education.

~~1.11 "Pupil enrollment count period" means the five days before and five days after the pupil enrollment count date.~~

~~1.12 "Approved full-day kindergarten program" means a full-day kindergarten program established under the Colorado Preschool Program Act, Section 22-28-104.~~

2. General

2.01 The Public School Finance Act of 1994 and ~~the Rules for the Administration of the Public School Finance Act of 1994~~these rules shall apply to all ~~Colorado school~~ districts. The Commissioner may grant variances to any or all of these Rules ~~for the Administration of the Public School Finance Act of 1994~~ .

2.01(1) If the Department determines that a ~~school~~ district has not complied with the provisions of the Public School Finance Act of 1994 or these rules, the Department shall notify such district in writing of the specific violation and shall state that the district's accreditation may be revoked or withheld by the State Board for such violation.

2.01(2) Such district shall have 30 days in which to respond in writing to the Department's notification.

2.01(~~2.5~~3) The Department shall review such responses.

2.01(~~2.5~~3)(a) If after making such review, the Department determines that such district is in compliance ~~with the provisions of the Public School Finance Act of 1994~~, no further action is necessary.

2.01(~~2.5~~3)(b) If after making such review, the Department determines that such district is still ~~has~~ not ~~complied with the provisions of the Public School Finance Act of 1994~~in compliance, it shall forward the notification and the district response to the State Board.

2.01(~~3~~4) When necessary, the State Board shall schedule a hearing with such district at the next available regularly scheduled State Board meeting occurring after the end of the 30-day district response time and shall notify the district of such hearing.

2.01(~~4~~5) At such hearing, the Department shall present its findings of non-compliance to the State Board, and the district shall respond to such presentation.

2.01(~~5~~6) At the regularly scheduled State Board meeting next following such presentation, the State Board shall decide if it intends to revoke or withhold such district's accreditation under section 22-2-106(1), ~~CRS.~~C.R.S., and shall notify the district in writing of its decision.

2.01(~~6~~7) If the State Board places such district on ~~Non~~non-accredited status, the Commissioner shall initiate school organization planning pursuant to Article 30 of Title 22, ~~CRS, and 1 CCR 301-1 State Board of Education Rule 3.04(2).~~C.R.S.

2.02 The Department shall prepare necessary forms and appropriate directions related thereto, which a district shall use to provide data required by the Department to meet its responsibilities in the Public School Finance Act of 1994.

2.02(a~~1~~) A district shall submit its electronic data exchange student file, along with a signed form "certification of pupil enrollment", no later than November 10.

2.03 The Department shall make available to a district detailed procedures with standard forms and records, which a district shall use to compute its certification of pupil enrollment to the State Board pursuant to Section 22-54-112, C.R.S.

2.03(a~~1~~) A district may request and receive approval from ~~the Research and Evaluation Unit of~~ the Department for alternative procedures for documentation which do not follow the standard procedural manual.

2.03(b~~2~~) The Department requires districts to automate the pupil count process; nonetheless, any such computerization does not reduce or eliminate a district's obligation to provide source documents for auditing purposes.

~~2.04 Since reporting of state data to the federal government requires an average daily attendance (ADA) figure, the Colorado ADA shall be the average daily attendance entitlements compared to the October 1 memberships for the reporting period. The resulting figure shall be used to compute the ADA figures for federal reporting purposes for Colorado for each reporting period.~~

~~2.05~~04 Computation and reporting of data shall be as outlined below.

2.~~05~~04 (a~~1~~) A district and the Department shall compute and report mill levy data to the nearest thousandth.

2.~~05~~04 (b~~2~~) A district and the Department shall compute and report any dollar data to the nearest cent dollar.

2.~~05~~04 (c~~3~~) A district and the Department shall compute and report any funded pupil count, pupil membership and pupil enrollment data to the nearest tenth.

~~2.06 Pursuant to Section 22-32-109, C.R.S., a local board shall determine, prior to the end of a school year, the length of time which the schools of the district shall be in session during the next following school year, but in no event shall said schools be scheduled to have less than one thousand eighty hours of planned teacher-pupil instruction and teacher-pupil contact during the school year for secondary school pupils in high school, middle school, or junior high school or less than nine hundred ninety hours of such instruction and contact for elementary school pupils, less than four hundred fifty hours of such instruction for a half-day kindergarten program or fewer than nine hundred hours of instruction for a full-day kindergarten program. For the Colorado Preschool Program, the number of hours scheduled shall be no less than three hundred sixty hours.~~

~~2.06(1) A local board may reduce the actual hours of teacher-pupil instruction and teacher-pupil contact to no less than one thousand fifty-six hours for secondary school pupils, no less than nine hundred sixty-eight hours for elementary school pupils, no less than four hundred thirty-five hours for half-day kindergarten pupils, no fewer than eight hundred seventy hours for full-day kindergarten pupils or no less than three hundred fifty-one hours for pupils enrolled in the Colorado Preschool Program for parent-teacher conferences, staff in-service programs, and closings deemed by the board to be necessary for the health, safety, or welfare of pupils; except that not more than twenty-four hours per school year may be used for parent-teacher conferences or staff in-service programs.~~

~~2.06(2) Teacher-pupil contact and teacher-pupil instruction means the time when a pupil is actively engaged in the educational process of a district.~~

~~2.02(6)(a) Each local board shall define "educational process," which definition may include any work-study time provided under the supervision of a certificated or licensed teacher but shall not include any time provided for lunch. Each local board, shall define "supervision of a certificated or licensed teacher."~~

~~2.02(2)(b) Beginning with calendars adopted for the 10-11 school year, each local board shall define "educational process," which definition may include passing time and which may also include any work-study time provided under the supervision of a certified or licensed teacher but shall not include any time provided for lunch. Each local board shall define "supervision of a certified or licensed teacher." For purpose of this section "passing time" is defined as the time between two classes or between a class and lunch period.~~

~~2.06(3)~~

2.05 Instructional Time for Purposes of the School Finance Act

2.05(a) To receive funding, a district must provide evidence of Instructional Time for purposes of funding each enrolled and attending pupil.

2.05(a)(1) For grades six through twelve, Instructional Time for funding each pupil may include direct teacher-pupil instruction and alternative teacher-pupil instruction for that pupil.

2.05(a)(1)(I) Alternative teacher-pupil instruction courses may not be considered for funding purposes if the course is not included in the published catalog. Beginning with calendars adopted for the 2024-25 school year and each school year thereafter, districts shall publish a catalog of courses using alternative teacher-pupil instruction (as defined in 1.15 of this rule) for any such courses they intend to provide to secondary pupils that they would also like included as

instructional time. The catalog must be published on the school/district/BOCES website by September 1st of the school year.

2.05(a)(2) For grades kindergarten through five, Instructional Time for funding each pupil may include direct teacher-pupil instruction.

2.05(a)(2)(I) Alternative teacher-pupil instruction time may be used for homebound students, as outlined in 5.03(4).

2.05(a)(3) For all grades, kindergarten through twelve:

2.05(a)(3)(I) Passing between two on-site classes, and between an on-site class and lunch, may be included as instructional time which counts towards funding eligibility. Each passing that can be considered as instructional time which counts towards determining funding eligibility shall not exceed 7 minutes.

2.05(a)(3)(II) Time provided for breakfast or lunch may not be included as instructional time for purposes of determining funding eligibility.

2.05(a)(3)(III) A district may include time for independent study and/or asynchronous learning that occurs off-site when a district conducts remote learning sporadically in response to public health and safety orders and precautions as instructional time for purposes of determining funding eligibility.

2.05(a)(3)(IV) Instructional time for purposes of determining funding eligibility does not include parent-led or parent-directed instruction.

2.05(a)(3)(V) Any specialized programming paid for with public funds and made available to part-time pupils shall also be available for participation by any other public school pupil within the same district.

2.05(a)(3)(VI) In no instance shall a district submit a pupil for funding if the instructional time used to qualify a pupil for funding is provided in an environment that requires participation in a tuition-based non-public school.

2.05(b) A district must comply with Section 22-32-109, C.R.S. regarding planned and actual hours for "teacher-pupil instruction and teacher-pupil contact." The Commissioner issues additional guidance regarding the reporting of "teacher-pupil instruction and teacher-pupil contact" for purposes of Section 22-32-109(1)(n), C.R.S. In the Commissioner's guidance, Instructional Time for purposes of funding under the School Finance Act may be the same or different from "teacher-pupil instruction and teacher-pupil contact" for purposes of planned and actual hours in compliance with Section 22-32-109(1)(n).

2.05 (b)(1) Individual pupils may elect to enroll in fewer hours of instructional time without affecting the satisfaction of this ~~school calendar~~ planned and actual hours of instruction requirement as long as the opportunity to enroll for the minimum hours each school year is provided to the pupils. ~~A local board may meet the required minimum hours for each school year by contracting for educational services from another entity.~~

~~2.06(4) Each local board shall establish the definition of "middle school" for purposes of the one-thousand-eighty-hour requirement.~~

~~2.07 Repealed.~~

~~2.08 Repealed.~~

~~2.09 In no case shall a school be in session for fewer than one hundred sixty days without the specific prior approval of the Commissioner of Education.~~

3.~~00~~ Pupil Enrollment Count Date

3.01 The Department shall identify the pupil enrollment count date by no later than July 1 of each year. The pupil enrollment count date is October 1 of each year, except as otherwise provided below.

3.01(a~~1~~) In any year in which October 1 is a Saturday, a Sunday, or any other day on which school is not in session, except as described in section 3.01 (2) of these rules, the pupil enrollment count date is the Monday following that Saturday, Sunday, or other day.

3.01(b~~2~~) In any year in which a day of a Major Religious Holiday occurs upon October 1, or, in years in which October 1 falls on a Saturday, Sunday, or other day on which school is not in session as described in section 3.01 (1) of these rules, or upon the Monday directly following October 1, the pupil enrollment count day is the first school day immediately following the conclusion of the holiday.

3.01(c~~3~~) Determination of the pupil enrollment count date shall not be affected by a district's decision to not have a school day on the pupil enrollment count date.

3.02 A district shall use the pupil enrollment count date unless an alternative count date is approved by the Department.

~~3.03 A district shall count its pupils enrolled and in attendance as of the pupil enrollment count date, and must be able to provide evidence of actual attendance of such pupils prior to said date, unless the pupil is new to the state or has proof of withdrawal from the prior in-state district at the time of enrollment, if the pupil enrolls during the pupil enrollment count period.~~

~~03.04 A district also shall keep an attendance record indicating a pupil's presence or absence each day.~~

~~3.05~~3.03 The Department may accept amended pupil enrollment count date pupil data, with appropriate supporting documentation, as provided by a district, unless the pupil enrollment count date pupil data has been audited by the Department.

3.04 The applicable count period is defined as the five school days preceding the applicable count date, the applicable count date, and the five school days following the applicable count date as determined by the district's adopted calendar.

3.05 ~~06~~ In no instance shall a district solicit ~~students~~pupils from other districts for the sole purpose of attendance during the applicable count period.

3.~~07~~06 In no instance shall a district solicit pupils from the ~~homestudy~~home school population solely for purposes of attendance through the ~~pupil enrollment~~ applicable count period.

4.~~00~~ Alternative Count Date

4.01 As needed, a district ~~shall~~may submit to the Department a proposal for an alternative count date or dates. The Department ~~shall~~may approve the establishment of district alternative count date(s) as appropriate prior to a district's proposed alternative count date(s). Such alternative count date(s) shall be set not more than forty-five (45) calendar days after the first school day occurring after the pupil enrollment count date.

4.02 A district may request the establishment of an alternative count date in appropriate circumstances, including but not limited to providing maximum flexibility in the operation and scheduling

of alternative program school calendars and of year-round calendars, in circumstances when pupils will be on authorized breaks on the pupil enrollment count date within the applicable budget year, or for other reasons as authorized in statute.

4.02(a~~1~~) A program designed to return dropout pupils to a school program leading to the completion of the twelfth grade is eligible for an alternative count date.

4.02(b~~2~~) A program not in session for at least the entire month prior to the pupil enrollment count date is eligible for an alternative count date.

~~4.03 Prior to the alternative count date, a district shall estimate and report on the Form "Certification of pupil enrollmentpPupil eEnrollment" the number of pupils to be counted on its alternative count date. A district shall conduct another count on the alternative count date and report the findings to the Department, which will replace the estimated alternative count date data, and must report a revised form "Certification of Pupil Enrollment."~~

4.04 The count on the alternative count date will be conducted in the same manner as the count on the pupil enrollment count date.

~~4.05 A district shall count its pupils enrolled and in attendance as of the alternative count date.~~

~~4.06 A district also shall keep an attendance record indicating a pupil's presence or absence each day.~~

~~4.07~~05 The Department may accept amended alternative count date pupil data, with appropriate supporting documentation, as provided by a district, unless the alternative count date pupil data has been audited by the Department.

5.~~00~~ Determination of Membership and ~~of~~ Funded Pupil Count Enrollment

5.01 A district's pupil membership and funded pupil count shall include only pupils enrolled in the district and in attendance in the district or educational program with which the district has contracted with to provide instructional services.

5.01(a~~1~~) No pupil shall be counted in ~~membership~~ a district's funded pupil count more than one full-time equivalent. A pupil in membership in two or more districts or in two or more eligible educational entities shall not be counted in ~~membership~~ the state's funded pupil count more than one full-time equivalent in total.

5.01(b~~2~~) A pupil included in a district's full-time membership shall equal one full-time equivalent (1.0~~),~~) for purposes of the district's funded pupil count, and a pupil included in a district's part-time membership shall equal one-half of one full-time equivalent (0.5~~).~~) for purposes of the district's funded pupil count.

5.01(c) Following the November 10 data submission (as described in 2.02(1) of this section), pupils counted in membership by multiple districts, such that the pupil exceeds one full-time equivalent in the state's funded pupil count will be included in the state's duplicate count process as determined by the Department. During the duplicate count process, the Department will evaluate appropriate documentation submitted by each district to determine which district may include the pupil in membership.

5.01(d) A pupil that is expelled but that is (1) required to resume attendance within 30 calendar days after the applicable count date, (2) receiving educational services under an Individual Educational Plan (IEP), or (3) receiving educational services under Section 22-33-203(2)(c), C.R.S., is enrolled and in attendance for purpose of these Rules.

5.02 A pupil shall be "enrolled" during the school year if such pupil attends ~~school~~ a public school, or educational program with which the district has contracted with to provide instructional ~~at~~services, at any time ~~in the school year of the pupil enrollment count date or of the alternative count date~~ on or prior to the applicable count date. ~~pupil enrollment count date or the alternative count date in a district which has met the minimum hours of opportunity requirement in Section 22-32-109, C.R.S., or which purchases comparable instructional services for such pupil.~~

5.02(a~~1~~) Enrollment must be evidenced by the receiving district with official registration, entry of pupil, and official individual class schedule dated on or before the ~~pupil enrollment~~applicable count date, ~~and~~as well as the date the pupil first attended on or before the ~~pupil enrollment~~applicable count date.

5.02(b) A district shall record withdrawals and transfers as of the last date of attendance prior to the date the pupil or the pupil's parent or guardian gives oral or written notification of the withdrawal or transfer.

5.02(c) For transfers between schools of the district, a district shall ensure the transferring pupils are not counted more than once in attendance on the applicable count date.

5.03 A pupil shall be in "attendance" if one or more of the following apply.

5.03(a~~1~~) The pupil attends school for all or any portion of the ~~pupil enrollment count date or of the alternative count date, except as provided below.~~applicable count date.

5.03(a~~1~~)(1~~a~~) ~~A.~~ For pupils exclusively enrolled in alternative teacher-pupil instruction (as defined in 1.15 of this rule), the district must provide attendance verification based upon direct teacher-pupil instruction, in-person educational activities, or evidence of participation in online synchronous and asynchronous internet-based educational activities. Districts may obtain pre-approval from the Department to include other forms of attendance verification.

5.03(b) The pupil is not in attendance on the applicable count date, for any reason but has attended school with the reporting district at some time prior to the applicable count date during the current school year, has not withdrawn or transferred from the district, and has resumed attendance within 30 calendar days after the applicable count date.

5.03(c) The pupil is truant, and the district has taken legal action as outlined in Article 33 of Title 22, C.R.S., to compel the pupil's attendance. A district shall document that it has notified the pupil's parent or guardian of its request for action by the court or of its directive to its attorney to file a request with the court. A district shall also document that it has made such a request of the court within 10 school days of the applicable count date. Nothing in this section 5.03(4) modifies the rules for counting dropouts or attendance under 1 CCR 301-1 and 1 CCR 301-78.

5.03(d) The pupil is home-bound but is enrolled and is receiving direct teacher-pupil instruction and/or alternative teacher-pupil instruction on a regular basis.

5.03(d)(1) For purposes of applying sections 5.05 and 5.06 of these Rules, the district shall utilize the pupil's home-bound schedule if the student has been receiving home-bound services since the start of the school year, or the pupil's schedule that was in place prior to beginning home-bound services if the pupil established attendance using that schedule during the current school year.

5.04 Pupils that first enroll or first attend on or after the applicable count date but within the applicable count period may be included in a district's pupil membership only if one of the following exceptions applies

5.04(a) The pupil is (1) new to the state and (2) enrolls and attends on the applicable count day.

5.04(b) The pupil (1) transfers from another in-state district ~~who newly enrolls and attends on the pupil enrollment count date or the alternative count date or in the five school days preceding the pupil enrollment count date or the alternative count date shall be in attendance for the receiving district. The pupil must show~~, (2) shows proof of withdrawal from the prior district at the time of enrollment in the receiving district~~.~~, and (3) enrolls and attends on the applicable count day. If the pupil returns to the prior district within 30 days after the prior district's applicable count day, that district may appeal to the Department for the purposes of determining eligibility to count the pupil.

5.04(c) The pupil transfers after the applicable count date from one district to a district with an approved alternative count date, and the receiving district provides documentation that the pupil does not meet membership criteria in the former district as of the pupil enrollment count date.

5.05 A district shall count a pupil in full-time funded pupil count, if (1) the pupil is enrolled and in attendance as of the applicable count day pursuant to these Rules, and (2) the pupil has a schedule of courses that provides at least 360 hours of Instructional Time (as defined in these Rules) in the semester of the applicable count date.

5.05(a) A pupil receiving services under an IEP which explicitly states the pupil is unable to benefit from a full-time program of services and describes how the pupil's disability affects their involvement, progress, and participation in appropriate activities such that the student would not be able to meet the full-time scheduling requirement, shall be deemed to meet the requirements of this section 5.05.

5.05(b) A pupil who completes one school year of enrollment in a half-day kindergarten educational program and does not advance to first grade, pursuant to Section 22-7-1207, C.R.S., is counted as a full-day pupil for the second year in which the pupil is enrolled in the half-day kindergarten educational program.

5.06 A district shall count a pupil in part-time funded pupil count, if (1) the pupil is enrolled and in attendance as of the applicable count day pursuant to these Rules, and (2) the pupil has a schedule that provides at least 90 hours but less than 360 hours of Instructional Time (as defined in these Rules) in the semester of the applicable count date.

5.06(a) A district shall obtain documentation which evidences the reasons a pupil is enrolled part-time and confirms how the pupil is compliant with the Compulsory school attendance requirements of Section 22-33-104, C.R.S.

5.06(b)(1) This documentation may include the written notification of the intent to homeschool pursuant to Section 22-33-104.5(3)(e), C.R.S.

5.06(c) For a pupil who is only enrolled and attending a part-time program, a district shall count such pupil at most in part-time funded pupil count regardless of the pupil's actual class schedule on the applicable count date.

5.06(d) A district may include home school pupils enrolled and attending a district educational program who meet the requirements of these Rules. A home school pupil is not eligible to be counted for more than a part-time funded pupil count (0.5 FTE).

5.06(e) A district may include a private school pupil enrolled and attending a district educational program who meet the requirements of these Rules. A private school pupil is not eligible to be counted for more than a part-time funded pupil count (0.5 FTE).

5.07 For pupils exclusively enrolled in alternative teacher-pupil instruction (as defined in 1.15 of this rule), the district must verify and document student residency in the State of Colorado during the current school year prior to the pupil enrollment count date.

~~5.03(1)(b)(I) The receiving district shall notify in writing, with a copy to the Department, the other district of the pupil's new enrollment within 15 calendar days after the pupil enrollment count date or the alternative count date. If the pupil returns to the prior district during the count period, the district may appeal to the Department for the purposes of determining eligibility to count the pupil.~~

~~5.03(1)(c)(II) This Rule is not intended to apply to situations in which a pupil transfers from an out-of-state district, from an in-district school, or from a private or independent school.~~

~~5.03(2) The pupil is absent on the pupil enrollment count date or the alternative count date but has attended school at some time during the five school days prior to the pupil enrollment count date or the alternative count date, has not withdrawn or transferred from the school as of the start of school on the pupil enrollment count date or the alternative count date, and has resumed attendance within 30 calendar days after the pupil enrollment count date or the alternative count date. This Rule also is intended to allow a district to count pupils who have no classes scheduled on the pupil enrollment count date or on the alternative count date.~~

~~5.03(3) The pupil is absent on the pupil enrollment count date or on the alternative count date, does not attend school on any of the five school days either prior to or following the pupil enrollment count date or alternative count date, and returns to school within 30 calendar days after the pupil enrollment count date or the alternative count date, and the district has on file the pupil's parent's or guardian's written documentation of intent to return the pupil to school within 30 calendar days after the pupil enrollment count date or the alternative count date and to not enroll the pupil in another school.~~

~~5.03(3)(a) The parent or guardian shall sign and date this documentation within 30 calendar days after the pupil enrollment count date or the alternative count date.~~

~~5.03(3)(b) This Rule is intended to allow a district to count a pupil who is on vacation or who has an illness or an unusual family situation which precludes school attendance.~~

~~5.03(4) The pupil is absent on the pupil enrollment count date or the alternative count date, is in attendance at some time prior to the five school days prior to the pupil enrollment count date or the alternative count date, is not in attendance at any time during the five school days immediately prior to the pupil enrollment count date or the alternative count date, and has resumed attendance at some time during the five school days following the pupil enrollment count date or the alternative count date.~~

~~5.03(4)(a) This Rule is intended to allow districts five school days after the pupil enrollment count date or the alternative count date before requesting the written documentation from a pupil's parent or guardian as required in section5.03(3) above.~~

~~5.03(5) The pupil transfers after the pupil enrollment count date or the alternative~~applicable ~~count date from one district to a district with an approved alternative count date, and the receiving district provides documentation that the pupil does not meet membership criteria in the former district as of the pupil enrollment count date.~~

~~5.03(5)(a) This Rule does not apply to pupils transferring to a district from out-of-state, or from a private school.~~

~~5.03(6) The pupil has reached at least age 16 as of the pupil enrollment count date or the alternative count date, does not attend any school in either the five school days preceding or following the pupil enrollment count date or the alternative count date, attends school at some time during the current school year prior to the pupil enrollment count date or the alternative count date, and resumes attendance within~~

30 calendar days after the pupil enrollment count date or the alternative count date, and the district has on file the pupil's parent's or guardian's written documentation of intent to return the pupil to school within 30 calendar days after the pupil enrollment count date or the alternative count date and to not enroll the pupil in another school.

5.03(6)(a) The parent or guardian shall sign and date the documentation within 30 calendar days after the pupil enrollment count date or the alternative count date.

5.03(7) The pupil is on suspension (either "in school" or "out of school") from school attendance on the pupil enrollment count date or the alternative count date but returns from suspension and resumes attendance within 30 calendar days after the pupil enrollment count date or the alternative count date.

5.03(8) The pupil is expelled from school prior to the pupil enrollment count date or the alternative count date but is receiving educational services under an Individual Educational Plan (IEP) in an alternate setting as of the pupil enrollment count date or the alternative count date or is required to resume attendance within 30 calendar days after the pupil enrollment count date or the alternative count date.

5.03(9) The pupil attends school on the pupil enrollment count date or the alternative count date then withdraws or transfers on or after the pupil enrollment count date or the alternative count date.

5.03(9)(a) A district shall not include in attendance a pupil who withdraws or transfers prior to the pupil enrollment count date or the alternative count date.

5.03(9)(b) A district shall record withdrawals and transfers as of the last date of attendance prior to the date the pupil or the pupil's parent or guardian gives oral or written notification of the withdrawal or transfer.

5.03(9)(c) A district shall examine records of transfers between schools of the district to ensure the transferring pupils are not counted more than once in attendance on the pupil enrollment count date or on the alternative count date.

5.03(9)(d) A district shall establish in its central district office a listing of pupils who have transferred between schools within the district.

5.03(10) The pupil is truant, and the district has taken legal action as outlined in Article 33 of Title 54, C.R.S., to compel the pupil's attendance.

5.03(10)(a) The pupil is truant if the pupil is under age 16 as of the pupil enrollment count date or the alternative count date, attends school at some time during the current school year preceding the pupil enrollment count date or the alternative count date, is absent on the pupil enrollment count date or the alternative count date and is absent during the five school days immediately preceding or following the pupil enrollment count date or the alternative count date, has not transferred or withdrawn prior to the pupil enrollment count date or the alternative count date, and has not provided written notice from the pupil's parent or guardian that the pupil will return to the school without enrolling in another school.

5.03(10)(b) A district shall document that it has notified the pupil's parent or guardian of its request for action by the court or of its intent to request action by the court as evidenced by its directive to its attorney to file a request with the court.

5.03(10)(b)(1) A district shall request such action no later than ten school days following the pupil enrollment count date or the alternative count date.

5.03(10)(b)(2) The request to the court shall include appropriate and available information as requested of the district by the court for purposes of locating the pupil and the pupil's parent(s) or guardian.

5.03(10)(b)(3) This Rule is not intended to modify the procedure for counting pupils who are dropouts.

5.04 A district shall count a pupil in full-time membership, if all of the following apply.

5.04(1) The pupil is enrolled and in attendance pursuant to section 5.02 and 5.03, respectively.

5.04(2) The pupil is enrolled as of the pupil enrollment count date or the alternative count date in any grade of the grade 1 through grade 12 group or in an approved full-day kindergarten program.

5.04(3) The pupil has a schedule as of the pupil enrollment count date or the alternative count date which provides at least 360 hours of teacher-pupil instruction and teacher-pupil contact in the semester of the pupil enrollment count date or the alternative count date. For purposes of determining the number of hours of teacher-pupil instruction and teacher-pupil contact:

5.04(3)(a) A district shall not include the actual time instruction is suspended for lunch period but may include time for parent-teacher conferences and for staff in-service programs, subject to the limitations in Section 22-32-109, C.R.S.

5.04(3)(b) For a scheduled independent study, a district shall include only the time of actual teacher-pupil instruction and teacher-pupil contact. Except in cases where districts conduct remote learning due to public health and safety orders and precautions as described below, teacher-pupil instruction and teacher-pupil contact during scheduled independent study must occur on-site under the supervision of a certificated or licensed teacher as determined by the local board.

5.04(3)(c) For a workstudy program, a district shall include only the time of instruction and contact provided under the supervision of a certificated or licensed teacher as determined by the local board.

5.04(3)(d) For night school classes, a district shall include time only to the extent that it would be included for a day school class.

5.04(3)(e) For independent learning that occurs off-site when a district conducts remote learning due to public health and safety orders and precautions, a district may include time in accordance with the local board's policy and definition of educational process as it relates to these remote learning situations.

5.05 A district shall count a pupil in full-time membership, if all of the following apply.

5.05(1) The pupil is enrolled and in attendance pursuant to section 5.02 and 5.03, respectively.

5.05(2) The pupil would be enrolled as of the pupil enrollment count date or the alternative count date, but for the pupil's disabling condition(s), in any grade of the grade 1 through grade 12 group or in an approved full-day kindergarten program.

5.05(2)(a) The pupil must reach age 6 on or before October 1 to be included in grade 1 enrollment or age 5 on or before October 1 to be included in full-day kindergarten enrollment.

5.05(2)(b) A pupil who has not yet reached age 21 as of October 1 or a pupil who reaches age 21 during the semester of the pupil enrollment count date or the alternative count date, and who is receiving services under an Individual Education Plan (IEP) shall satisfy the requirements of section 5.05(2).5.05(3) The pupil has an Individual Education Plan (IEP) schedule as of the pupil enrollment count date or the alternative count date which provides at least 360 hours of teacher-pupil instruction and teacher-pupil contact in the semester of the pupil enrollment count date or the alternative count date. 5.05(3)(a) The pupil receiving services under an IEP but unable to benefit from a full-time program of services shall be deemed to meet the requirements of section 5.05(3).

5.06 A district shall count a pupil in part-time membership, if all of the following apply.

~~5.06(1) The pupil is enrolled and in attendance pursuant to section 5.02 and 5.03, respectively.~~

~~5.06(2) The pupil is enrolled as of the pupil enrollment count date or the alternative count date in any grade of the grade 1 through grade 12 group.~~

~~5.06(3) The pupil has a schedule as of the pupil enrollment count date or the alternative count date which provides at least 90 hours but less than 360 hours of teacher-pupil instruction and teacher-pupil contact in the semester of the pupil enrollment count date or the alternative count date. For purposes of determining the number of hours of teacher-pupil instruction and teacher-pupil contact:~~

~~5.06(3)(a) A district shall not include the actual time~~

~~instruction is suspended for lunch period but may include time for parent-teacher conferences and for staff in-service programs, subject to the limitations in Section 22-32-109, C.R.S~~

~~.5.06(3)(b) For a scheduled independent study, a district shall include only the time of actual teacher-pupil instruction and teacher-pupil contact. Except in cases where districts conduct remote learning due to public health and safety orders and precautions as described below, teacher-pupil instruction and teacher-pupil contact during scheduled independent study must occur on-site under the supervision of a certificated or licensed teacher as determined by the local board.~~

~~5.06(3)(c) For a work-study program, a district shall include only the time of instruction and contact provided under the supervision of a certificated or licensed teacher as determined by the local board.~~

~~5.06(3)(d) For night school classes, a district shall include time only to the extent that it would be included for a day school class.~~

~~5.06(3)(e) For a pupil who is only enrolled and attending a part-time program, a district shall count such pupil at most in part-time membership regardless of the pupil's actual class schedule on the pupil enrollment count date or the alternative count date.~~

~~5.06(3)(f) For independent learning that occurs off-site when a district, BOCES, or charter school conducts remote learning due to public health and safety orders and precautions, local board may include time in accordance with the local board's policy and definition of educational process as it relates to these remote learning situations.~~

~~5.07 A district shall count a pupil in part-time membership, if all of the following apply.~~

~~5.07(1) The pupil is enrolled and in attendance pursuant to section 5.02 and 5.03, respectively.~~

~~5.07(2) The pupil is enrolled as of the pupil enrollment count date or the alternative count date in any grade of the grade 1 through grade 12 group.~~

~~5.07(2)(a) The pupil must reach age 6 on or before October 1 to be included in grade 1 enrollment.~~

~~5.07(2)(a)(I) The pupil must reach age 5 on or before October 1 to be included in kindergarten enrollment.~~

~~5.07(2)(a)(II) The pupil must reach age 3, pursuant to 22-28-104(1)(a.5), C.R.S., or age 4 on or before October 1 to be included in Colorado Preschool Program.~~

~~5.07(2)(b) A pupil who has not yet reached age 21 as of October 1 or a pupil who reaches age 21 during the semester of the pupil enrollment count date or the alternative count date, and who is receiving services under an Individual Education Plan (IEP) shall satisfy the requirements of section 5.07(2).~~

~~5.07(3) The pupil has an Individual Education Plan (IEP) schedule as of the pupil enrollment count date or the alternative count date which provides at least 90 hours but less than 360 hours of teacher-pupil instruction and teacher-pupil contact in the semester of the pupil enrollment count date or the alternative count date.~~

~~5.08 A district shall count a pupil in part-time membership, if all of the following apply.~~

~~5.08(1) The pupil is enrolled and in attendance pursuant to section 5.02 and 5.03, respectively.~~

~~5.08(2) The pupil is enrolled in kindergarten.~~

~~5.08(2)(a) This rule does not apply for any pupil enrolled in an official full-day kindergarten program established by law.~~

~~5.08(3) The pupil has a schedule as of the pupil enrollment count date or the alternative count date which provides at least 90 hours of teacher-pupil instruction and teacher-pupil contact in the semester of the pupil enrollment count date or the alternative count date. For purposes of determining the number of hours of teacher-pupil instruction and teacher-pupil contact, a district shall not include the actual time instruction is suspended for lunch period but may include time for parent-teacher conferences and for staff in-service programs, subject to the limitations in Section 22-32-109, C.R.S.~~

~~5.08(3)(a) Regardless of the amount of hours included in the pupil's schedule, a district shall count the pupil meeting the requirements of this Rule section 5.08 only in part-time membership.~~

~~5.09 A district shall count a pupil in part-time membership, if all of the following apply.~~

~~5.09(1) The pupil is enrolled and in attendance pursuant to section 5.02 and 5.03, respectively.~~

~~5.09(2) The pupil is enrolled in kindergarten.~~

~~5.09(2)(a) This rule does not apply for any pupil enrolled in an official full-day kindergarten program established by law.~~

~~5.09(3) The pupil has an Individual Education Plan (IEP) schedule as of the pupil enrollment count date or the alternative count date which provides at least 90 hours of teacher-pupil instruction and teacher-pupil contact in the semester of the pupil enrollment count date or the alternative count date.~~

~~5.10 A district shall count a pupil in part-time membership, if all of the following apply.~~

~~5.10(1) The pupil is enrolled and in attendance pursuant to section 5.02 and R-5.03, respectively.~~

~~5.10(2) The pupil is enrolled in and attending a district~~

~~preschool program as defined in and established pursuant to Article 28 of Title 54, C.R.S.~~

~~5.10(2)(a) A pupil cannot be enrolled in and attend a preschool program in more than one district and is not eligible to be counted for more than .5 FTE. The resident district will be the prevailing district for funding. The non-resident district may charge tuition to the parent.~~

~~5.10(3) The pupil has a schedule as of the pupil enrollment count date or the alternative count date which provides at least 90 hours of teacher-pupil instruction and teacher-pupil contact in the semester of the pupil enrollment count date or the alternative count date.~~

~~5.10(3)(a) Regardless of the amount of hours included in the pupil's schedule, a district shall count the pupil meeting the requirements of this Rule section 5.10 only in part-time membership.~~

~~5.10(4) The pupil has reached age 3 or 4 on or before October 1.~~

~~5.11 A district shall count a pupil in part-time membership, if all of the following apply.~~

~~5.11(1) The pupil is enrolled and in attendance pursuant to section 5.02 and 5.03, respectively.~~

~~5.11(2) The pupil is a three- or four-year-old with a disability and is receiving an educational program under Article 20 of Title 54, C.R.S., or the pupil has reached age 5 by October 1, is determined to have a disability, and would be in kindergarten but for the disabling condition, or the pupil will reach age 3 during the semester of the pupil enrollment count date and has a disability.~~

~~5.11(3) The pupil has an Individual Education Plan (IEP) schedule as of the pupil enrollment count date or the alternative count date which provides at least 90 hours of teacher-pupil instruction and teacher-pupil contact in the semester of the pupil enrollment count date or the alternative count date.~~

~~5.12 A district may count a home-bound pupil in membership, as outlined below, if all of the following apply.~~

~~5.12(1) The pupil is enrolled and in attendance pursuant to section 5.02 and 5.03, respectively.~~

~~5.12(2) The pupil is receiving instruction, including but not limited to instruction delivered using technology under the supervision of a certificated or licensed teacher, as determined by the local board on a regular basis.~~

~~5.12(3) If prior to becoming home-bound, the pupil had a schedule as of the pupil enrollment count date or the alternative count date which would have provided at least 360 hours of teacher-pupil instruction and teacher-pupil contact in the semester of the pupil enrollment count date or the alternative count date, then a district shall count the pupil in full-time membership. For purposes of determining the number of hours of teacher-pupil instruction and teacher-pupil contact:~~

~~5.12(3)(a) A district shall not include the actual time instruction is suspended for lunch period but may include time for parent-teacher conferences and for staff in-service programs, subject to the limitations in Section 22-32-109, C.R.S.~~

~~5.12(3)(b) For a scheduled independent study, a district shall include only the time of actual teacher-pupil instruction and teacher-pupil contact. Except in cases where districts conduct remote learning due to public health and safety orders and precautions as described below, teacher-pupil instruction and teacher-pupil contact during scheduled independent study must occur on-site under the supervision of a certificated or licensed teacher as determined by the local board.~~

~~5.12(3)(c) For a work-study program, a district shall include only the time of instruction and contact provided under the supervision of a certificated or licensed teacher as determined by the local board.~~

~~5.12(3)(d) For night school classes, a district shall include time only to the extent that it would be included for a day school class.~~

~~5.12(3)(e) For independent learning that occurs off-site when a local board conducts remote learning due to public health and safety orders and precautions, a district may include time in accordance with the local board's policy and definition of educational process as it relates to these remote learning situations.~~

~~5.12(4) If prior to becoming home-bound, the pupil had a schedule as of the pupil enrollment count date or the alternative count date which would have provided at least 90 hours of teacher-pupil instruction and teacher-pupil contact in the semester of the pupil enrollment count date or the alternative count date, then a district shall count the pupil in part-time membership. For purposes of determining the number of hours of teacher-pupil instruction and teacher-pupil contact:~~

~~5.12(4)(a) A district shall not include the actual time instruction is suspended for lunch period but may include time for parent-teacher conferences and for staff in-service programs, subject to the limitations in Section 22-32-109, C.R.S.~~

~~5.12(4)(b) For a scheduled independent study, a district shall include only the time of actual teacher-pupil instruction and teacher-pupil contact. Except in cases where local boards conduct remote learning due to public health and safety orders and precautions as described below, teacher-pupil instruction and teacher-pupil contact during scheduled independent study must occur on-site under the supervision of a certificated or licensed teacher as determined by the local board.~~

~~5.12(4)(c) For a work-study program, a district shall include only the time of instruction and contact provided under the supervision of a certificated or licensed teacher as determined by the local board.~~

~~5.12(4)(d) For night school classes, a district shall include time only to the extent that it would be included for a day school class.~~

~~5.12(4)(e) For independent learning that occurs off-site when a local board conducts remote learning due to public health and safety orders and precautions, a district may include time in accordance with the local board's policy and definition of educational process as it relates to these remote learning situations.~~

~~5.12(4)(f) For a pupil who is only enrolled~~

~~5.13 A district may count a home-study pupil in part-time membership, if all of the following apply.~~

~~5.13(1) The pupil is enrolled and in attendance pursuant to section 5.02 and 5.03 respectively.~~

~~5.13(2) The pupil also is enrolled and is attending a district educational program which provides at least 90 hours of teacher-pupil instruction and teacher-pupil contact in the semester of the pupil enrollment count date or the alternative count date. For purposes of determining the number of hours of teacher-pupil instruction and teacher-pupil contact, a district shall not include the actual time instruction is suspended for lunch period but may include time for parent-teacher conferences and for staff in-service programs, subject to the limitations in Section 22-32-109, C.R.S.~~

5.08 Pupils exclusively enrolled in online classes, but are not enrolled in an online school, must be enrolled in an online program.

5.09 For pupils enrolled in and attending ~~a part-time program, a district shall count such pupil at most in part-time membership regardless of the pupil's class schedule on the pupil enrollment count date or the alternative count date.~~

~~5.14 A district may count a pupil enrolled in one or more courses offered by~~ an ~~institution of higher education, for a pupil participating in~~ Early College pursuant to Section~~§~~ 22-35-103(10), C.R.S.~~:~~~~,~~ ~~in membership, as outlined below.~~

~~5.14(1) The pupil is enrolled and in attendance pursuant to section 5.02 and 5.03, respectively.~~

~~5.14(1)(a)~~ 5.09 (a) A pupil may meet the attendance ~~requirement~~requirements of ~~section~~sections 5.03 and 5.04 by attending either the district school or the institution of higher

education. A district shall document the attendance as of the applicable count date of all pupils included in its pupil membership who are enrolled in secondary courses and shall provide evidence of tuition payment for courses at institutions of higher learning. ~~on the official count date or the alternative count date.~~

~~5.14(2) If~~ 5.09 (b) Pupils enrolled only in courses offered by an institution of higher education may be counted in full-time funded pupil count if the number of semester credit hours for the courses in which the pupil is enrolled on the ~~official count date or the alternative~~applicable count date is equivalent to a full-time pupil credit load as defined for the institution of higher education, or is equal to at least twelve ~~seven~~ semester credit hours. ~~, then a district shall count the pupil in full-time membership.~~

5.09~~14~~(c~~3~~) Pupils enrolled only in courses offered by an institution of higher education may be counted in part-time funded pupil count if ~~If~~ the number of semester credit hours for the courses in which the pupil is enrolled on the ~~official count date or the alternative~~applicable count date is less than a full-time pupil credit load as defined for the institution of higher education~~,~~ or is less than twelve ~~seven~~ semester credit hours, but is at least three semester credit hours. ~~, then a district shall count the pupil in part-time membership.~~

5.09~~14~~(d4) ~~If a pupil is attending~~ Pupils enrolled in both courses offered by ~~a~~the district and courses offered by an institution of higher education may be counted in full-time funded pupil count~~learning and~~ if the sum of the instructional hours ~~of teacher-pupil instruction and teacher-pupil contact in the district's~~in the district's educational program is at least 90 hours and the credit hours for the ~~institution's~~institution of higher education's courses is at least 3 semester credit hours. ~~then a district shall count the pupil in full-time membership.~~

5.09~~14~~(e~~5~~) If a pupil is enrolled in classes through the district only, sections 5.05 and ~~has at least 360 hours~~5.06 of these Rules apply. ~~pupil-teacher contact time then a district shall count the student in full-time membership; if the number of pupil-teacher contact times is at least 90 hours, but less than 360 hours, then the district shall count the student in part-time membership~~

5.09~~14~~(f~~6~~) A district shall keep at its central district office a record of pupils included in its pupil membership who are enrolled at institutions of higher learning as of the ~~official~~applicable count date ~~or~~, as well as a record of the class schedules of such pupils. ~~alternative count date.~~

~~5.14(7) A district shall keep at its central district office a record of the class schedules of all pupils included in its pupil membership who are enrolled at institutions of higher learning as of the official count date or the alternative count date.~~0

~~5.14(8) A district shall document the attendance as of the official count date or the alternative count date of all pupils included in its pupil membership who are enrolled at institutions of higher learning.~~

10~~5.15~~ A district's pupil enrollment shall be the membership of the district as of the ~~pupil enrollment count date or the alternative~~applicable count date and any adjustments for the following as applicable.

5.~~15~~(10 (a) A pupil enrolled in a public school and receiving education services from another entity through a purchase agreement may be included in the district's enrollment. The district shall provide evidence of payment for the entire cost of services used to determine funding eligibility. Documentation from the educational provider must evidence funding criteria have been met, including contract, provider calendar, provider bell schedule, provider attendance, provider schedule. ~~.~~

5.10 (b) A pupil receiving services from a district under Section 22-32-141, C.R.S., on the applicable count date may be included in the district's pupil enrollment. Pupils receiving services from a district under Section 22-32-141, C.R.S., within 30 days after the applicable count date

may be included in the district's pupil enrollment if the pupil is not included in any other district's pupil enrollment.

5.11 In the event a pupil meets the funding criteria at multiple districts, the Department will determine which district is eligible for funding. The following duplicate count process criteria will be considered in determining which district is eligible to submit the pupil for funding:

5.11 (a) If one district is using the pupil enrollment count date and another is using an approved alternative count date, the district using the pupil enrollment count date is eligible to submit the pupil for funding.

5.11 (b) If a pupil transfers on the pupil enrollment count date and meets the funding requirements at multiple districts on the pupil enrollment count date, the receiving district is eligible to submit the pupil for funding.

5.11 (c) If a pupil transfers between two districts with approved alternative count dates and meets the funding requirements at both districts on their respective approved alternative count dates, the receiving district is eligible to include the pupil for funding.

5.11 (d) If a pupil is enrolled part-time at two Colorado public schools (and is not a home-school or private school pupil), both reporting districts may be eligible to submit the pupil for a maximum of part-time funding, pending a review of documentation to confirm the pupil's eligibility.

5.11 (e) If a home-school or private school pupil is simultaneously enrolled and receiving educational services at two different districts, and the pupil meets the part-time funding criteria at both, the district of primary residence is allowed to submit the pupil for funding.

5.11 (f) If a pupil transfers from one Colorado public school district to another, after the pupil enrollment count date but within the count period, the pupil is eligible for funding at the receiving district only if the pupil did not meet the funding criteria at the sending district and the pupil established attendance during the current year in a Colorado public school prior to the pupil enrollment count date.

~~5.15(2) A pupil included in the pupil membership of an eligible facility pursuant to section 16.00.~~

~~5.15(2)(a) A pupil who reaches age 21 during the semester of the pupil enrollment count date or the alternative count date, who is in placement in an eligible facility as of the pupil enrollment count date, and whose district of residence and district of attendance are not the same shall be counted by the district of residence as one pupil on the roll of out-of-district placed pupils.~~

~~5.15(3) A pupil for whom a district either pays or receives any amount of tuition.~~

~~5.15(3)(a) A pupil for whom a district receives maximum tuition shall be included only in the pupil enrollment of the district which agrees to pay the tuition. In the event an individual and not a school district is to pay the tuition, no district shall include the pupil in its pupil enrollment.~~

~~5.15(4) A pupil enrolled in a less-than-full-time program.~~

~~5.15(5) Replacement of estimates with actual count figures for programs having alternative count dates.~~

~~5.16 Pupils eligible to be counted in detention centers~~

~~5.16(1) Students in short-term detention centers on the pupil enrollment count date are eligible to be counted by the district of residence if they meet the following criteria:~~

~~5.16(1)(a) The pupil was in attendance in the month preceding the count date, has not withdrawn from the district of residence, and the resident district received notification from the district in which the detention center is located verifying the pupil was in the detention center as of the pupil enrollment count day.~~

~~5.16(1)(b) Students not in attendance in the month preceding the count date are eligible to be counted if the district of residence is also the district where the detention center is located. The district must enroll and establish a schedule with intent to have the pupil attend district schools after release from the detention center.~~

~~5.16(1)(c) The district where the detention center is located (district of attendance) may count a pupil that is not eligible to be counted by the district of residence. The district of attendance must receive written verification from the district of residence stating that the pupil was not eligible to be counted by the district of residence. The district of attendance must provide the educational program at the detention center.~~

~~5.16(1)(d) Detention center pupils are not considered facility placed students.~~

~~5.17 Pupils enrolled in on-line programs~~

~~5.17(1) A pupil enrolled in an on-line program during the 2001-02 school year and who is enrolled and participates in any such on-line program on October 1 within the applicable budget year shall be counted in the "pupil enrollment" of the district and the district shall receive the district's per pupil revenue for the pupil, section 22-54-103(10)(a)(ii), C.R.S..~~

~~5.17(2) A pupil enrolled in an on-line program within the applicable budget year that was enrolled in a public school in the immediately preceding school year, shall be counted in the "on-line" pupil count and the district shall receive the minimum per pupil funding amount for the pupil.~~

~~5.17(3) Repealed May 10, 2007~~

~~5.18 Fifth-year programs Repealed May 10, 2007~~

~~5.18(1) Repealed May 10, 2007~~

~~**6.00 District Pupils Eligible for Free Lunch**~~

~~6.01 "District pupils eligible for free lunch" means the number of pupils included in the district pupil enrollment pursuant to section 5.15 who are eligible for free lunch pursuant to the provisions of the federal "National School Lunch Act; 42 U.S.C. 1751, et. seq., and of the federal "Child Nutrition Act; 42 U.S.C. 1771, et. seq., which were in effect on July 1, 1994.~~

~~6.02 A district shall report to~~

6. At-Risk Pupils and English Language Learners ~~Free and Reduced Lunch Eligibility~~

6.01 Pursuant to Section 22-54-103(1.5)(d), C.R.S., pupils must be identified by a district as eligible for free or reduced lunch as of the applicable count date (or within 30 days thereafter, for pupils not in attendance on the applicable count date).

6.~~03~~02 As evidence of a pupil's qualification for inclusion as a district pupil eligible for free or reduced lunch, a district shall use one of the following items for each pupil ~~claimed as a district pupil eligible for free lunch.~~and shall retain records thereof in its child nutrition/school food service office.

6.0302 (a1) The pupil's current year "application for free or reduced price school meals,", which application shall be for the school year of the pupil enrollment count date or the alternative applicable count date and shall be approved within 30 calendar days after the pupil enrollment applicable count date or the alternative count date..

6.02(b) 03(1)(a)Absent the current year application, a district may submit the pupil's prior year application, which application shall be valid evidence for a maximum of 30 school days into through the applicable count date of the current year.

6.03(02 (c) A copy of the direct certification listing as of the pupil enrollment count date or the alternative applicable count date which includes the pupil's name.

6.03(302 (d) For a district with a school or schools operating under a federal Special Assistance Certification and Reimbursement Alternative (7 CFR 245.9), , evidence of the pupil's inclusion on the district's base year count and further evidence that such pupil remains included in the district's pupil enrollment pursuant to section 5.15. This method shall not be available if a district alters the boundaries of the participating schools.

6.03(3)(a) A district operating under a federal Special Assistance certification and Reimbursement Alternative (7 CFR 245.9) must notify the Research and Evaluation Unit of the Department at least 30 calendar days prior to the pupil enrollment count date of its intention to document eligible pupils at specific schools pursuant to section 6.03(3).

6.03(3)(b) If a district alters the boundaries of a school operating under a federal Special Assistance Certification and Reimbursement Alternative (7 CFR 245.9), the district no longer may document eligible pupils at such school pursuant to Rule section 6.03(3).

6.04 A district shall retain in its child nutrition/school food service office the records of the applications for free or reduced price school meals and the records of direct certification listings required pursuant to section 6.03.

6.50

6.03 Pursuant to Section 22-54-103(6.5)(a), C.R.S., pupils who are English Language Learners are identified with a Language Proficiency of Non-English Proficient or Limited-English Proficient as of the applicable count date and are within the five-year services window defined in English Language Proficiency Act (ELPA).

7. Cost of Living Factor -- newly organized districts

6.57.01 A district shall annually cause a schedule to be placed in the annual audit report of its financial statements which follows the required practices of the Department's Financial Policies and Procedures Handbook as adopted by the State Board.

7.01 Except in the event of a deconsolidation as described in sectionSection 22-30-102(2)(a), CRSC.R.S., resulting in a newly organized district, the Department shall assign a cost of living factor for purposes of the Public School Finance Act of 1994 to a new district organized pursuant to Article 30 of Title 22, C.R.S.,.

6.51(1) Such cost of living factor shall be valid until the staff of the legislative council certifies a cost of living factor for such district pursuant to section 22-54-104(5), C.R.S..

6.527.02 In determining a cost of living factor to assign, the Department shall review materials used in the most recent cost of living analysis conducted by the staff of the legislative council for those districts affected by the reorganization. The Department shall also consult with representatives of the

affected school districts and with other parties as necessary. Such cost of living factor shall be valid until the staff of the legislative council certifies a cost of living factor for such district pursuant to Section 22-54-104(5), C.R.S.

~~6.53 In determining a cost of living factor to assign, the Department shall consult with representatives of the affected school districts and with other parties as necessary.~~

~~6.54~~

7.03 In the event of a consolidation of existing districts and a cost of living factor assigned by the Department which is less than the cost of living factor previously applicable to the district prior to consolidation, the Department's assignment shall be attributable to matters other than the mere consolidation of the districts.

~~6.55~~7.04 The Department shall assign such cost of living factor at least 30 days prior to the start of the newly organized district's budget year and shall certify such factor to the district in writing.

~~**7.00 District Annual Audit Reports of Financial Statements**~~

8. Department Audits of Districts

~~7~~

8.01 ~~A district~~ The Department shall ~~annually cause a schedule~~perform audits of pupil enrollment count data to ~~be placed in~~ensure the ~~annual audit report of its financial statements which follows the required practices~~accuracy of the ~~Department's Financial Policies and Procedures Handbook as adopted by the State Board.~~

~~7.02 A district shall submit to the Department the annual audit report of its financial statements within six months next following the fiscal year audited.~~

~~7.03 Since the State Board has determined that the timely filing of the annual audit report is the legal obligation of the district and that the~~ information used to determine funding.~~contained therein including the auditor's opinions has a time value, the Department will identify for the State Board any district that fails to file such a report in a timely manner as provided in statute and in these Rules.~~

~~8.01~~8.02 Each district and ~~eligible~~approved facility ~~pursuant to section 14.03~~ school shall retain complete documentation supporting any certification made to the Department or any other data given to the Department for purposes of administering the Public School Finance Act of 1994 until audited by the Department or until five years from the certification due date whichever comes first. The Department encourages a district to retain all required documentation in a central location.

8.03 In addition to satisfying section 8.02 of these rules for its own pupils (if any), a ~~.01(1)A~~ BOCES ~~participating in the provision of educational~~providing services ~~to~~on behalf of a district ~~pupils~~, charter school, or BOCES shall ensure that its documentation is sufficient to allow ~~a~~such district, charter school, or BOCES to meet the requirement in section ~~8.01.~~ 8.02~~The Department encourages a district to retain all required documentation in a central location until audited by the Department or until five years from the certification due date whichever comes first.~~

~~8.03 Repealed.~~

8.04 If the Department determines that a district or an ~~eligible~~approved facility school has received payment of funds greater than the amount to which the district or ~~eligible~~approved facility school is entitled, the district or ~~eligible~~approved facility school shall be responsible for repayment to the Department within 30 calendar days from the date of said determination.

8.04(a1) Audit repayments outstanding after 30 calendar days shall be assessed interest ~~at a rate consistent with Section 5-12-101, C.R.S., beginning from the final settlement date of the audit.~~ as provided in Section 22-2-113(1)(g), C.R.S.

8.04(b2) A district or ~~an eligible~~approved facility school that refuses to pay a determined repayment amount may have its current and future payments or reimbursements withheld until the full amount of the repayment, plus applicable interest, is recovered.

~~8.04(3) If necessary, the Department may adjust future payments to a district or an eligible facility to fully recover outstanding audit repayments plus applicable interest.~~

8.05 If the Department determines that a district or an eligible facility has not received full payment of funds to which it is entitled, the Department shall be responsible for payment to the district or eligible facility.

8.06 A district or an eligible facility may appeal any audit finding in writing to the Commissioner within 30 calendar days. ~~8.06(1)~~ The Commissioner shall rule within 30 calendar days of receipt of a written appeal. The ruling shall be in writing and shall either uphold, modify, or overturn the appealed audit finding(s). ~~8.06(2)~~ The Commissioner's ruling shall be final, and no additional administrative appeals shall be provided.

9.00 Business Incentive Agreements

~~9.01 A district which negotiates an incentive payment or credit pursuant to Section 22-32-110(1)(ff), C.R.S., or pursuant to Section 22-32-110(1)(gg), C.R.S., shall submit a copy of the agreement to the Public School Finance Unit of the Department.~~

~~9.01(1) A school district board of education shall not enter into an agreement to provide an incentive payment or credit unless the Colorado Economic Development Commission (EDC) has reviewed the agreement. A letter from EDC indicating that the required review has been conducted must also be submitted to the department.~~

~~9.02 Annually, a district shall obtain certification from the county assessor of the amount of the assessed valuation of the property covered by the agreement by January 15 of each fiscal year.~~

~~9.03 The Department shall make any necessary adjustment to a district's state share of total program pursuant to Section 22-54-106, C.R.S., prior to June 30 of each fiscal year.~~

~~9.03(1) Adjustments will be made only for investments occurring within or after the calendar year in which an agreement is signed.~~

~~9.03(2) For compliance with Section 22-54-106(8)(a)(II), C.R.S., the Department annually may calculate the state share payments using the applicable mill levies certified in the current fiscal year.~~

~~9.04 Annually, a district shall certify to the Department the district's compliance with the terms of its agreement(s), including payment of any incentive payment or credit.~~

~~10.00~~ **State Average Per Pupil Operating Revenues**

~~10~~9.01 The Department shall certify the state average per pupil operating revenues pursuant to Section 22-54-103, C.R.S., by June 15 next preceding the fiscal year.

~~10.01(1)~~ The certified ~~state average per pupil operating revenues shall~~ figure may be subject to minor correction and audit changes; agreements between districts and other entities to pay the state average need not be adjusted to the revised figure.

~~11.00~~**10.** **Buyout of Categorical Programs**

~~11~~10.01 The Department shall certify to those districts required to levy additional mills pursuant to Section 22-54-107, C.R.S., the amount of categorical program funding which is subject to buyout requirements.

~~11~~10.02 The Department shall use the best available data, including estimated amounts if actual figures are unknown.

~~11.03 The Department shall prorate each categorical program buyout requirement if a district's additional revenues available pursuant to Section 22-54-107, C.R.S., are insufficient to fully buy out the programs.~~

~~12.00~~

11. **Timely Payment of School District Obligations**

~~12.01 If a district has issued general obligation bonds on or after July 1, 1991, pursuant to Articles 42 or 43 of Title 54, C.R.S., or has entered into a lease agreement or installment purchase agreement pursuant to Section 22-32-127, C.R.S., or to Section 22-45-103(1)(c),~~

11.01 If a district has bonds or other obligations described in Section 22-41-110, C.R.S., and does not have adequate funds to pay principal and interest payments due, such district shall notify the Department in writing of its inability to pay no later than 20 calendar days prior to the payment due date.

~~13.00~~**12.** **Authorization of Additional Local Revenues**

~~13~~12.01 If a district holds an election pursuant to Article X, Section 20 of the state constitution, ~~Section~~section 22-40-102, C.R.S., Section 22-42-102, C.R.S., or Sections 22-54-107.5 through ~~-~~108.7, C.R.S., the president of the local board of education of the district or a designee shall provide to the ~~Public School Finance Unit of the~~ Department no later than ten business days after the election: (1) a copy of the official ballot question language as certified to the county clerk for a coordinated election or a copy of the official ballot marked with the word "sample;" and (2) the number of votes cast for the question and the number of votes cast against the question.

~~13~~12.02 When a local board of education decides not to raise any or all of the amount approved at an election pursuant to ~~Section~~section 22-54-108, C.R.S., the amount approved shall not be reduced and shall be available for the local board to include in determining the general fund levy in any future fiscal years.

13. Pupils In State Programs

13.01 "State program" has the same definition as the term is defined in section 22-54-129(1)(f), C.R.S.

13.02 For purposes of this section, "pupil" means a child or youth who has attained three years of age on or before August 1 and who is under twenty-one years of age, as defined in section 22-2-402(7), C.R.S. When a pupil reaches age 21, a state program may include such pupil in its monthly report of pupils served and in its calculation of full-time equivalent membership only through the end of the semester in which the pupil reaches age 21.

13.03 State programs shall provide to the Department a pupil enrollment count pursuant to these rules on or before October 5 of each budget year. The mental health institute at Pueblo or Fort Logan shall count only pupils for whom the institute has responsibility because of a court order or other action by a public entity in Colorado (as defined in section 22-2-402(4.5), C.R.S.).

13.04 On or before the fifteenth day of each month, a state program shall report to the Department the actual number of pupils who received educational services during the prior calendar month and the corresponding number of full-time equivalent pupils to which the state program provided such services.

13.04(a) The mental health institute at Pueblo or Fort Logan shall count only pupils for whom the institute has responsibility because of a court order or other action by a public entity in Colorado, as defined in section 22-2-402(4.5), C.R.S.

13.04(b) Full-time equivalent membership is determined as follows: Total instructional days in membership divided by total instructional calendar days in reporting period equals full-time equivalent membership.

13.04(c) The first day of attendance following a pupil's enrollment in the educational program establishes the first day of the pupil's full-time equivalent membership in an educational program.

13.04(d) Membership in an educational program continues until the pupil withdraws and the pupil's name no longer appears on the roster of the state program, or until terminated automatically after five consecutive unexcused absences.

13.04(e) A state program may include in its full-time equivalent membership: (1) up to ten days of excused absences for a pupil; and (2) up to five days of unexcused absence.

13.04(f)A state program shall retain documentation of pupil names (first, middle, last); date of birth; parent/guardian resident address; district of residence; state assigned student identification number (SASID); dates of admission and discharge; schedules; and records of attendance, until audited by the Department or until five years from the date the state department submits its monthly reports to the Department, whichever is earlier.

13.05 For each full-time equivalent membership reported, a state program shall receive a monthly payment reflecting a daily rate of statewide base per pupil funding, divided by 176, times 1.4. A state program may claim no more than 235 days of funding per calendar year (amounting to no more than 1.73 times statewide base per pupil funding) for any one pupil. Funding may be prorated under section 22-22-54-129(4)(c), C.R.S., based on available appropriations.

14. Pupils In Approved Facility Schools

14.01 "Approved facility school" has the same meaning as the term is defined in section 22-54-129(1)(a), C.R.S.

14.02 For purposes of this section, "pupil" means a child or youth who has attained three years of age on or before August 1 and who is under twenty-one years of age, as defined in section 22-2-402(7), C.R.S. When a pupil reaches age 21, an approved facility school may include such pupil in its monthly report of pupils served and in its calculation of full-time equivalent membership only through the end of the semester in which the pupil reaches age 21.

14.03 "Baseline funding" means a funding amount based on student enrollment projections that is intended to provide sufficient funding for minimum education program services for an approved facility school.

14.04 "Public entity" means a public entity responsible for referring students to or placing students in out-of-home, day treatment, residential treatment, hospital, and specialized day school placements with providers.

14.05 The Department shall utilize monthly enrollment counts and point-in-time enrollment counts to determine the student count number used to calculate the baseline funding amount annually for each approved facility school.

14.06 On or before the fifteenth day of each month, an approved facility school shall report to the Department the actual number of pupils enrolled to receive educational services during the prior calendar month and the corresponding number of full-time equivalent pupils to which the approved facility school provided such services.

14.06(a) Approved facility schools shall only use student enrollment numbers for those students who are residents of Colorado and are:

14.06(a)(I) placed by a court order;

14.06(a)(II) referred or placed by a public entity, including but not limited to school districts, departments of human services, Department of Youth Services (DYS);

14.06(a)(III) patients of a hospital; or

14.06(a)(IV) a homeless child as defined in section 22-1-102.5, C.R.S.

14.06(b) Full-time equivalent membership is determined as follows: Total instructional days in membership divided by total instructional calendar days in reporting period equals full-time equivalent membership.

14.06(c) The first day of attendance following a pupil's enrollment in the educational program establishes the first day of the pupil's full-time equivalent membership in an educational program.

14.06(d) Membership in an educational program continues until the pupil withdraws and the pupil's name no longer appears on the roster of the approved facility school, or until terminated automatically after five consecutive unexcused absences.

14.06(e) An approved facility school may include in its full-time equivalent membership: (1) up to ten days of excused absences for a pupil; and (2) up to five days of unexcused absence.

14.06(f) An approved facility school shall retain documentation of pupil names (first, middle, last); date of birth; parent/guardian resident address; district of residence; state assigned student identification number (SASID); whether the pupil was placed in the facility as defined in section 22-2-402(4) and (4.5), C.R.S.; dates of admission and discharge; schedules; and records of attendance, until audited by the Department or until five years from the date it submits its monthly reports to the Department, whichever is earlier.

14.07 Approved facility schools shall receive payments monthly, including applicable prorations, pursuant to section 22-54-129(2.5), C.R.S. An approved facility school shall receive one twelfth of the total baseline funding amount on the 15th of each month. The baseline funding amount shall include the offset amount for the special education rate and hospital offset amount.The baseline funding formula shall be adjusted annually based on inflation, determined by the department. The department shall publicly post and distribute a schedule of student enrollment thresholds and associated decreases, as required by section 22-54-129(2.5)(e)(I)(C), C.R.S., by July 1st each year. Funding may be prorated under section 22-22-54-129(2.5)(f), C.R.S., based on available appropriations.

~~**14.00 Pupils Publicly Placed Outside the District of Residence Definitions**~~

~~14.01 "Approved Facility School", as defined in section 22-2-402(1), C.R.S., means an educational program that is operated by a facility to provide educational services to students placed in the facility and~~

that, pursuant to section 22-2-407(2), C.R.S., has been placed on the list of facility schools that are approved to receive reimbursement for providing educational services to students placed in a facility.

14.02 "State Program" means, the Colorado School for the Deaf and the Blind, Colorado Mental Health Institute at Fort Logan, and the Colorado Mental Health Institute at Pueblo.

14.03 "Pupil in Public Placement or Pupil Publicly Placed" means a pupil placed in a facility by a court order or other action by a public entity in Colorado or the pupil has been determined to be homeless as defined in 22-1-102.5, C.R.S..

14.04 "Pupil Enrollment" means the number of students receiving educational services at the approved facility school or state program on the pupil enrollment count date of the applicable budget year or on the school day nearest said date.

15.00 Pupils Publicly Placed Outside the District of Residence-General

15.01 The Department shall provide instructions including appropriate definitions of terms for use by approved facility school or state program personnel in preparing certifications required under these rules and related statutes.

16.00 Pupils Publicly Placed Outside the District of Residence-Determining Pupil Enrollment at an Approved Facility School or State Program

16.01 To determine its pupil enrollment, an approved facility school or state program shall count as of the pupil enrollment count date specified in section 3.00 each of its Colorado resident, publicly-placed pupils being served who is under age 21 as of the pupil enrollment count date and who has not met graduation requirements as of the pupil enrollment count date.

16.02 No later than October 5, an approved facility school or a state program shall report to the Department the full name (first, middle, last), gender, date of birth, parent/guardian resident address, district of residence, state assigned student identification number (SASID), and whether the student was publicly placed for each pupil included in its pupil enrollment in order to receive education program funding.

17.00 Pupils Publicly Placed Outside the District of Residence-Monthly Reporting to CDE for Reimbursement

17.01 On or before the fifteenth day of each month, an approved facility school or a state program shall report to the Department using the format required by the department its number of pupils served during the prior calendar month and the corresponding full-time equivalent membership of such pupils determined by the number of instructional days served.

17.01(1) An approved facility school's or a state program's attendance report received after the fifteenth day of the month shall be deemed late.

17.01(2) The Department may accept amended monthly reports from an approved facility school or a state program prior to making that month's reimbursement payment pursuant to section 19.00.

17.02 An approved facility school or a state program shall report a maximum of one and one third full-time equivalent for each pupil in a school year.

18.00 Pupils Publicly Placed Outside the District of Residence-Determining Full-time Equivalent Membership

~~18.01 The first day of attendance following a pupil's enrollment in the educational program of an approved facility school or a state program establishes the first day of the pupil's full-time equivalent membership in an educational program.~~

~~18.02 Membership in an educational program continues until the pupil withdraws and the pupil's name no longer appears on the roster of the approved facility school or state program, or until terminated automatically after five continuous calendar days beginning on the pupil's first day of non-authorized absence from the educational program.~~

~~18.02(1) Non-authorized absences are time away from the educational program for any reason other than, but not limited to, pre-approved vacations, sickness, hospitalization, pre-approved therapeutic leave, and sentencing to a detention center.~~

~~18.03 Full-time equivalent membership is determined as follows: Total instructional days in membership divided by total instructional calendar days in reporting period (usually a month) equals full-time equivalent membership.~~

~~18.04 Pupil means a child or youth who has attained three years of age on or before August 1 and who is under twenty-one years of age.~~

~~18.05 If the pupil returns on or before the fifth educational calendar day after the first day of non-authorized absence from the educational program, an approved facility school or a state program may include the days the pupil was absent in its calculation of total educational calendar days in membership.~~

~~18.06 If the pupil returns after the fifth calendar day after the first day of non-authorized absences from the educational program, an approved facility school or a state program may include only those days preceding and including the last day of actual attendance in the educational program in its calculation of total calendar days in membership.~~

~~18.07 For authorized pupil absences, an approved facility school or a state program may include the actual number of instructional days the pupil was absent, up to a maximum of ten, in its calculation of total educational calendar days in membership.~~

~~18.08 When a pupil reaches age 21, an approved facility school or a state program may include such pupil in its monthly report of pupils served and in its calculation of full-time equivalent membership only through the end of the semester in which the pupil reaches age 21.~~

~~18.09 An approved facility school or a state program shall retain documentation of pupil names, birthdates, addresses, SASID, dates of admission, schedules, records of attendance, dates of discharge, and placement information until audited by the Department or until five years from the date it submits its monthly reports to the Department pursuant to section 17.00.~~

~~19.00 Pupils Publicly Placed Outside the District of Residence-Monthly CDE Reimbursement Payments~~

~~19.01 On or before the fifteenth day of the month following the month in which an approved facility school or a state program is required to report its numbers of pupils served and its full-time equivalent membership pursuant to section 17.00, the Department shall pay the facility a proportional amount of the state average per pupil revenues based on the approved facility school's or state program's reported full-time equivalent membership determined by the number of instructional days served.~~

~~19.01(1) An approved facility school or a state program which operates an educational program shall receive a daily rate of one and one-third times the state average per pupil revenue for each full-time equivalent membership reported. The number of instructional days may range from 176 days to 235 days~~

~~per year, depending on whether the approved facility school or state program provides a nine, ten, eleven or twelve month educational program.~~

~~19.01(2) The Department may prorate its reimbursement payments if deemed necessary to accommodate a projected revenue shortfall.~~

~~19.02 The Department shall pay an approved facility school or a state program a maximum of one and one-third times the state average per pupil revenues for each full-time equivalent membership for a school year.~~

~~19.03 The Department is authorized to hold late reports pursuant to section 17.01(1) and to hold any approved facility school's or state program's adjustment to its full-time membership information previously reported until the end of the fiscal year, at which time adjusted reimbursement payments may be made.~~

~~19.04 An approved facility school or a state program annually shall submit its school year calendar to the Department on or before May 1st.~~

Editor's Notes

History

Section 2254-R-5.00 eff. 05/10/2007.

Entire rule eff. 09/30/2007.

Sections 2254-R-1.00, 14.00 – 20.00 emer. rule eff. 09/11/2008.

Sections 2254-R-1.00; 14.00 – 20.00 eff. 11/30/2008.

Sections SB&P, 2254-R-14.00 through 19.00 emer. rule eff. 06/10/2009; expired 09/10/2009. Section 2254-R-20.00 emer. rule repealed eff. 06/10/2009; expired 09/10/2009.

Sections SB&P, 2254-R-2.00, 2254-R-14.00 through 19.00 eff. 09/30/2009. Section 2254-R-20.00 repealed eff. 09/30/2009.

Entire rule emer. rule eff. 07/30/2012; expired 10/10/2012.

Entire rule eff. 12/30/2012.

Entire rule eff. 10/30/2020.

Annotations

Rule 2254-R-5.19(3) (adopted 08/08/2007) was not extended by Senate Bill 08-075 and therefore expired 05/15/2008.

Rules 2254-R-14.01(1), 14.03, 14.04, 14.06, 14.07(3), 14.07(5), 14.08, 16.01(1), 16.01(1.01), 16.01(1.02), 16.02, 16.02(1), 17.02, 19.01(2), 20.00 (adopted 10/01/2008) were not extended by House Bill 09-1292 and therefore expired 05/15/2009.

Notice of Proposed Rulemaking

Tracking number

2023-00805

Department

700 - Department of Regulatory Agencies

Agency

707 - Division of Professions and Occupations - Board of Chiropractic Examiners

CCR number

3 CCR 707-1

Rule title

CHIROPRACTIC EXAMINERS RULES AND REGULATIONS

Rulemaking Hearing

Date

01/25/2024

Time

09:00 AM

Location

Webinar only - See below

Subjects and issues involved

The Colorado Board of Chiropractic Examiners will hold a Rulemaking Hearing on January 25, 2024, at 9:00 A.M. to receive testimony before the Board determines whether to approve proposed revisions to Rule 1.8 - ELECTROTHERAPY AUTHORITY. The purpose of the proposed revisions are to correct an inconsistency between the statute, specifically section 12-215-108, C.R.S., which requires a chiropractic applicant to successfully complete a 120-hour or more course to practice electrotherapy and does allow for an examination-only option.

Statutory authority

12-20-204, 12-215-105(1)(a) and 24-4-103 C.R.S.

Contact information

Name

Maria Hernandez

Title

Regulatory Coordinator

Telephone

303-869-3409

Email

dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Board of Chiropractic Examiners

CHIROPRACTIC EXAMINERS RULES AND REGULATIONS

3 CCR 707-1

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

…

1.8 ELECTROTHERAPY AUTHORITY

This Rule is promulgated pursuant to sections 12-20-204, 12-215-105(1)(a), ~~and~~ 12-215-103, and 12-215-108, C.R.S.

…

B. To receive certification, the chiropractic applicant shall present evidence of ~~the following:~~
~~1. If you graduated prior to 1978,~~ successful completion of a course of not less than one hundred twenty classroom hours in the subject taught by a school having status with the Council on Chiropractic Education or a Board approved program.~~; or~~
~~2. Passing an examination given by an organization recognized by the Board.~~

…

Editor's Notes

History

Rules 3, 7, 26 eff. 05/30/2007.
Rules 10, 22 eff. 07/30/2007.
Rules 8-15 eff. 01/30/2008.
Rules 6, 7, 10, 11, 13, 17, 27 eff. 07/30/2009.
Rules 1(D); 2; 4; 8(C); 11; 12; 17(A) eff. 12/01/ 2009. Rules 5; 9 repealed eff. 12/01/2009.
Rules 8, 19 eff. 03/17/2010.
Rule 27 repealed eff. 03/17/2011.
Rules 8, 28 eff. 09/30/2012. Rule 26 repealed eff. 09/30/2012.
Rule 30 emer. rule eff. 12/31/2012; expired 04/30/2013.
Rules 6-7, 29 eff. 01/14/2013.
Rule 7 C emer. rule eff. 01/24/2013.
Rule 7 C eff. 05/15/2013.
Rules 1, 3, 4, 6-8, 10, 11, 17, 20, 22, 24, 25, 30 eff. 05/25/2019.
Rules 12, 13, 15, 19 E eff. 07/15/2019.
Rules 1.6 A, 1.7, 1.11 eff. 11/14/2019.
Rule 1.31 emer. rule eff. 05/01/2020; expired 08/29/2020.

Rule 1.32 emer. rule eff. 05/11/2020; expired 09/08/2020.
Rules 1.8 A, 1.8 G, 1.8 K, 1.33, 1.34 emer. rules eff. 08/25/2020.
Rule 1.31 emer. rule eff. 08/30/2020; expired 12/28/2020.
Rule 1.32 emer. rule eff. 09/09/2020.
Rules 1.8 A, 1.8 G, 1.8 K, 1.33, 1.34, 1.35, Appendix B eff. 11/30/2020.
Rule 1.32 emer. rule eff. 12/28/2020.
Rule 1.36 emer. rule eff. 01/11/2021.
Rule 1.31 emer. rule eff. 01/20/2021.
Rules 1.31, 1.32 emer. rules eff. 04/27/2021.
Rule 1.36 emer. rule eff. 05/11/2021.
Rules 1.35 E-F eff. 05/15/2021.
Rules 1.31, 1.36 emer. rules eff. 07/12/2021.
Rules 1.31, 1.36 emer. rules eff. 11/02/2021.
Rules 1.31, 1.36 emer. rules eff. 03/02/2022.
Rules 1.31, 1.36 emer. rules eff. 06/28/2022.
Rules 1.38, 1.39 emer. rules eff. 09/22/2022.
Rules 1.31, 1.36 emer. rules eff. 10/26/2022.
Rules 1.31, 1.36 emer. rules eff. 11/11/2022.
Rules 1.37-1.39, Appendix B eff. 11/14/2022.
Rules 1.31, 1.36 emer. rules eff. 01/09/2023; expired 05/09/2023.
Rules 1.1-1.31 eff. 11/14/2023.

Annotations

Rules 1.39 B. and 1.39 C. (adopted 09/22/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

Notice of Proposed Rulemaking

Tracking number

2023-00802

Department

700 - Department of Regulatory Agencies

Agency

710 - Division of Professions and Occupations - State Electrical Board

CCR number

3 CCR 710-1

Rule title

STATE ELECTRICAL BOARD RULES AND REGULATIONS

Rulemaking Hearing

Date

01/24/2024

Time

09:00 AM

Location

Webinar only - See below

Subjects and issues involved

The Colorado Electrical Board will hold a Rulemaking Hearing on January 24, 2024, at 9:00 A.M. to receive testimony before the Board determines whether to repeal Rule 1.14, on a permanent basis, to implement Colorado Senate Bill 23-265.

Statutory authority

12-20-204, 12-115-107(2)(a) and 24-4-103 C.R.S.

Contact information

Name

Maria Hernandez

Title

Regulatory Coordinator

Telephone

303-869-3409

Email

dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

State Electrical Board

STATE ELECTRICAL BOARD RULES AND REGULATIONS

3 CCR 710-1

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

…

~~**1.14 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES**~~

~~**This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-115-107(2)(a) and 12-20-204, C.R.S.**~~

~~**A. Definitions, for purposes of this Rule, are as follows:**~~

~~**1. "Applicant" means as defined in section 12-20-102(2), C.R.S.**~~

~~2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.~~

~~3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.~~

~~4. "Licensee" means as defined in section 12-20-102(10), C.R.S.~~

~~5. "Regulator" means as defined in section 12-20-102(14), C.R.S.~~

~~6. "Registrant" means as defined in section 12-20-102(12), C.R.S.~~

~~B. [Expired 05/15/2023 per Senate Bill 23-102]~~

~~C. [Expired 05/15/2023 per Senate Bill 23-102]~~

Editor's Notes

History

Entire rule eff. 08/01/2008.
Rules 3.7, 5.0-5.2, 9.0-10.0 eff. 08/01/2010.
Entire rule eff. 03/17/2011.
Rules 8.1, 9.7 m eff. 09/15/2011.
Rules 3.0-10.7 eff. 07/15/2012.
Entire rule eff. 07/01/2014.
Rules 2.2, 3.1, 4.4.1.2.B, 4.4.1.3.A eff. 01/30/2015.
Entire rule eff. 03/17/2017.
Rule 2.0 eff. 06/01/2017.
Rules 6.0, 11.0 eff. 07/15/2017.
Rules 7.2.5.9, 8.3.3, 11.2 eff. 03/17/2018. Rule 11.3.7 repealed eff. 03/17/2018.
Rule 8.3.3. eff. 11/14/2018.
Rule 1.2 eff. 07/15/2020.
Rule 1.3 E eff. 07/15/2021.
Rule 1.11 G.2 eff. 11/30/2021.
Entire rule eff. 07/15/2022.
Rule 1.14 emer. rule eff. 09/28/2022.
Rule 1.14 eff. 11/30/2022.
Rule 1.5 C emer. rule eff. 07/26/2023.
Rules 1.5 A, B, 1.10 D eff. 07/30/2023.

Portugal17

Annotations

Rules 1.14 B. and 1.14 C. (adopted 09/28/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

Notice of Proposed Rulemaking

Tracking number

2023-00803

Department

700 - Department of Regulatory Agencies

Agency

716 - Division of Professions and Occupations - State Board of Nursing

CCR number

3 CCR 716-1

Rule title

NURSING RULES AND REGULATIONS

Rulemaking Hearing

Date

01/24/2024

Time

09:30 AM

Location

Webinar only - See below

Subjects and issues involved

The Colorado State Board of Nursing will hold a Rulemaking Hearing on January 24, 2024, at 9:30 A.M. to receive testimony on new rules and revisions to multiple Board rules to implement Colorado Senate Bill 23-167 CONCERNING THE REGULATION OF CERTIFIED MIDWIVES BY THE STATE BOARD OF NURSING, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Statutory authority

12-20-204, 12-255-107(1)(a), and 24-4-103 C.R.S.

Contact information

Name

Maria Hernandez

Title

Regulatory Coordinator

Telephone

303-869-3409

Email

dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Division of Professions and Occupations - State Board of Nursing

NURSING RULES AND REGULATIONS

3 CCR 716-1

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

…

1.3 RULES AND REGULATIONS REGARDING THE IMPOSITION OF FINES

A. **BASIS:** The authority for the promulgation of these rules and regulations by the State Board of Nursing ("Board") is set forth in sections 12-20-204(1), 12-255-107(1)(j), and 12-255-119(4)(c)(III), C.R.S.

B. **PURPOSE:** Section 12-255-119(4)(c)(III), C.R.S. provides authority for the Board to impose a fine in addition to any other disciplinary action taken. The purpose of these rules and regulations is to establish a fine structure and the circumstances under which fines may be imposed by the Board.

C. **INTRODUCTION:** The Board [acting as either the inquiry or hearings panel] may impose discipline in the form of a fine of no less than $250.00 but no more than $1,000.00 per violation of the Nurse and Nurse Aide Practice Act or any rule adopted by the Board. The fine may be in addition to any other discipline imposed by the Board pursuant to section 12-255-120, C.R.S. Payment of a fine does not exempt the licensee from compliance with the Nurse and Nurse Aide Practice Act.

A fine of $500.00 or less that is imposed by the Board, must be paid in full including the applicable surcharge, at the time the Final Agency Order is entered or a Stipulation is reached

between the parties. A fine greater than $500.00 that is imposed by the Board, must be paid in full including the applicable surcharge, according to the time frame set forth in the Final Agency Order or Stipulation. A licensee who fails to pay a fine that is required pursuant to a Final Agency Order or Stipulation is subject to suspension of an individual's~~his or her~~ nursing or certified midwife license as set forth in section 12-255-119(4)(c)(III~~IV~~), C.R.S.

The Board may impose a fine, in addition to any other disciplinary sanction, under the following circumstances:

D. PRACTICING ~~NURSING~~ WITH AN EXPIRED LICENSE:

1. Pursuant to section 12-20-202(1)(e), C.R.S., a licensee has sixty days within which to renew a license after the date of expiration without the imposition of a disciplinary sanction for practicing nursing or midwifery on an expired license. A licensee who fails to renew his license within the sixty day grace period shall be treated as having an expired license as set forth in section 12-20-202(2), C.R.S.

2. The Board may impose a fine for the period of sixty-one days or greater but less than two years from the date of expiration of a license if the Board determines that the facts and circumstances warrant a fine in addition to other disciplinary action.

3. If the Board finds that the licensee has practiced nursing or midwifery with an expired license for a two year period or greater but less than three years from the date of expiration of the license, the Board may impose a fine not to exceed $250.00.

4. If the Board finds that the licensee has practiced nursing or midwifery with an expired license for a three year period or greater but less than four years from the date of expiration of the license, the Board may impose a fine not to exceed $500.00.

5. If the Board finds that the licensee has practiced nursing or midwifery with an expired license for a four year period or greater but less than five years from the date of expiration of the license, the Board may impose a fine not to exceed $750.00.

6. If the Board finds that the licensee has practiced nursing or midwifery with an expired license for five years or more from the date of expiration of the license, the Board may impose a fine not to exceed $1000.00.

E. FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF A FINAL AGENCY ORDER OR A STIPULATION

1. The Board may impose a fine for failure to comply with the terms and conditions of probation as specified in the Stipulation and Final Agency Order ("Stipulation") as agreed to by the licensee, or the Final Agency Order issued by the Board. If a licensee fails to timely submit the documents as required by his or her Stipulation or Final Agency Order, the Board my impose a fine in addition to any other disciplinary sanction as follows:

   a. For a first violation, where the required document(s) are submitted over thirty days late, the Board may impose a fine not to exceed $250.00.

b. For a second violation, where the required document(s) are submitted over thirty days late, the Board may impose a fine not to exceed $500.00.

c. For a third violation, where the required document(s) are submitted over thirty days late, the Board may impose a fine not to exceed $1000.00.

F. PRACTICING OUTSIDE SCOPE OF ROLE/SPECIALTY AND POPULATION FOCUS

1. If a licensee engages in the practice of nursing or midwifery that is outside his or her Scope of Role/Specialty and Population Focus, the Board may impose a fine, in addition to any other disciplinary sanction, as follows:

a. For a first practice violation, the Board may impose a fine not to exceed $500.00.

b. For a second practice violation, the Board may impose a fine not to exceed $1000.00.

G. OTHER CIRCUMSTANCES FOR THE IMPOSITIONS OF FINES

1. The Board may impose a fine at its discretion where the licensee has benefitted financially from his or her violation of the Nurse and Nurse Aide Practice Act or any rule adopted by the Board. In such cases, the amount of the fine will be based on the facts and circumstances of the particular case.

Adopted: January 27, 2010
Effective: March 31, 2010

1.4 CONFIDENTIAL AGREEMENTS

A. STATEMENT OF BASIS: The authority for the promulgation of these rules and regulations by the State Board of Nursing ("Board") is set forth in sections 12-255-107 and 12-255-135, C.R.S.

B. PURPOSE: To specify procedures and criteria relating to the entering into Confidential Agreements with licensees.

C. Board Discretion. Compliance with this Rule 1.4 is a prerequisite for eligibility to enter into a Confidential Agreement with the Board pursuant to sections 12-255-120 and 12-30-108, C.R.S., and does not guarantee a right to a Confidential Agreement or require the Board to enter into a Confidential Agreement with the licensee. Upon notification by the licensee, the Board will evaluate all facts and circumstances to determine if a Confidential Agreement is appropriate.

D. Notice to the Board. No later than thirty days from the date a physical illness or condition, or behavioral health, mental health, or substance use disorder that affects a licensee's ability to practice nursing or midwifery with reasonable skill and safety, or may endanger the health or safety of individuals under the licensee's care, the licensee shall provide the Board, in writing, the following information:

1. The diagnosis and a description of the illness, condition, or disorder;

2. The date that the illness, condition, or disorder was first diagnosed;

3. The name of the current treatment provider and documentation from the current treatment provider; confirming the diagnosis, date of onset, and treatment plan;

4. A description of the licensee's practice and any modifications, limitations or restrictions that have been made to such practice as a result of the illness, condition, or disorder; and

5. Whether the licensee has been evaluated by, or is currently receiving services from, the Board's authorized Peer Health Assistance Program related to the illness or condition and, if so, the date of initial contact and whether services are ongoing.

E. Change of Circumstances. The licensee shall further notify the Board of any significant change in the illness, condition or disorder ("change of condition") that impacts the licensee's ability to perform a nursing or midwifery service with reasonable skill and safety. The licensee must notify the Board of any significant change in condition, whether positive or negative. Such notification shall occur within thirty days of the change of condition. The licensee shall provide the Board, in writing, the following information:

1. The date of the change of illness, condition, or disorder;

2. The name of the current treatment provider and documentation from the current treatment provider confirming the change of condition, the date that the condition changed, the nature of the change of condition, and the current treatment plan;

3. A description of the licensee's practice and any modifications, limitations or restrictions to that practice that have been made as a result of the change of illness, condition, or disorder;

4. Whether the licensee has been evaluated by, or is currently receiving services from, the Board's authorized Peer Assistance Services related to the change of condition and, if so, the date of initial contact and whether services are ongoing.

F. Failure to Notify. If the Board discovers that a licensee has a mental or physical illness, condition, or disorder that impacts the licensee's ability to provide nursing care with reasonable skill and safety and the licensee has not timely notified the Board of the illness, condition, or disorder, the licensee shall not be eligible for a Confidential Agreement and may be subject to disciplinary action pursuant to section 12-255-120, C.R.S.

…

1.8 DECLARATORY ORDERS

General Authority C.R.S. 24-4-105(11)

A. STATEMENT OF BASIS AND PURPOSE

These Rules are adopted pursuant to section 24-4-105(11), C.R.S., in order to provide for a procedure for entertaining requests for declaratory orders to terminate controversies or to remove

uncertainties with regard to the applicability of statutory provisions or rules or orders of the Nursing Board to persons defined in the rules.

B. Any person may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order to the Board.

C. The Board will determine, in its discretion and without notice to petitioner, whether to rule upon any such petition. If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the petitioner of its action and state the reasons for such decision. Any of the following grounds, among others, may be sufficient reason to refuse to entertain a petition:

1. Failure to comply with Section (C) of Rule 1.8.

2. A ruling on the petition will not terminate the controversy nor remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Board.

3. The petition involves any subject, question or issue which is the subject of, or is involved in, a matter (including a hearing, investigation or complaint) currently pending before the Board, particularly, but not limited to, any such matter directly involving the petitioner.

4. The petition seeks a ruling on a moot or hypothetical question, or will result in an advisory ruling or opinion, having no direct applicability to petitioner.

5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to C.R.C.P. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule or order in question.

D. Any petition filed pursuant to this rule shall set forth the following:

1. The name and address of the petitioner; whether the petitioner is licensed by the Board as an R.N. or L.P.N. or L.P.T., or Licensed CM, or employs such licensees.

2. The statute, rule or order to which the petition relates.

3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner. Petitioner may also include a concise statement of the legal authorities upon which petitioner relies.

4. A concise statement of the specific declaratory order sought by petitioner.

E. If the Board determines that it will rule on the petition, the following procedures shall apply:

1. The Board may rule upon the petition without holding an evidentiary hearing. In such a case:

a. Any ruling of the Board will apply only to the extent of the facts presented in the petition and in any clarifying information submitted in writing to the Board.

b. The Board may order the petitioner to file a written clarification of factual matters, a written brief, memorandum or statement of position.

c. The Board may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.

d. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.

e. The Board may take administrative notice of commonly known facts within its expertise or contained in its records and consider such facts in its disposition of the petition.

f. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

2. The Board may, in its discretion, set the petition for an evidentiary hearing, conducted in conformance with section 24-4-105, C.R.S., upon due notice to petitioner, for the purpose of obtaining additional facts of information or to determine the truth of any facts set forth in the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire. For the purpose of such a hearing, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires to consider.

F. The parties to any proceeding pursuant to this Rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as required by Section (C) of Rule 1.8. Any reference to a "petitioner" in this Rule also refers to any person who has been granted leave to intervene by the Board.

…

1.13 RULES AND REGULATIONS REGARDING THE DELEGATION OF NURSING OR CERTIFIED MIDWIFE TASKS

A. STATEMENT AND BASIS OF PURPOSE

The Rules contained in this Rule 1.13 are adopted pursuant to authority granted the Board by sections 12-20-204(1) and 12-255-107(1)(j), C.R.S., and specifically pursuant to authority granted in section 12-255-131(6), C.R.S. The purpose of these Rules is to specify procedures and criteria regarding the delegation of nursing or certified midwife tasks.

The practical nurse ("PN"), professional nurse ("RN"), ~~and~~ advanced practice registered nurse ("APRN"), licensed certified midwife ("CM") are responsible for and accountable to each consumer of nursing care for the quality of nursing or midwifery care he or she provides either directly or through the delegated care provided by others.

B. DEFINITIONS:

For the purposes of Rule 1.13, the following terms have the indicated meaning;

1. "Board" means the State Board of Nursing.

2. "Client" means the recipient of nursing or midwifery care.

3. "Competence" is the Certified Nurse Aide's (CNA) ability to perform those tasks included in the expanded scope of practice as set forth in Section (I)(3) of Rule 1.10, with reasonable skill and safety to a client, as deemed by the RN or APRN.

4. "Continued Competence" is the CNA's ability to perform those tasks included in the expanded scope of practice as set forth in Section (I)(3) of Rule 1.10, with reasonable skill and safety to a client, as deemed by the RN, or APRN's direct observation of the CNA's clinical performance of the task to occur not less than annually after initially being deemed competent.

5. "Deemed Competent" is the RN or APRN's determination that the CNA is competent to perform the task with reasonable skill and safety to a client.

6. "Delegatee" means an individual receiving the Delegation who acts in a complementary role to the PN, RN, ~~or~~ APRN, or licensed CM who has been trained appropriately for the task delegated, and whom the PN, RN, ~~or~~ APRN, or licensed CM authorizes to perform a task that the individual is not otherwise authorized to perform.

7. "Delegation" means the assignment to a competent individual the authority to perform in a selected situation a selected nursing or selected certified midwife task included in the practice of practical nursing as defined in section 12-255-104(10), C.R.S., or in the practice of professional nursing as defined in section 12-255-104(8), C.R.S.; or the practice of a licensed certified midwife as defined in section 12-255-104(7.5), C.R.S.

8. "Delegator" means the PN, RN, ~~or~~ APRN, or licensed CM making the Delegation; the Delegator must hold a current, active license and if appropriate advanced practice registration and prescriptive authority.

9. "Developmental Disabilities Nurse (DDN) Setting" means a practice setting for a RN or APRN, employed by or contracted by community center boards, the community board's provider organizations or other agencies providing services through the Colorado Division of Developmental Disabilities.

10. Individualized Healthcare Plan ("IHP") means a plan for a specific Client that is developed by a RN or APRN employed or contracted by the Client's School, Licensed Child Care Facility, or DDN Setting in conjunction with the Client and parent or guardian and, if applicable, based on the Client's Licensed Health Care Provider's orders for the administration of Medications and/or treatments for the Client.

11. "Licensed Child Care Facility" means any facility licensed as a family child care home or child care center as defined in section 26-6-102, C.R.S.

12. "Licensed Health Care Provider" means an individual who is licensed or otherwise authorized by the state pursuant to this Title 12, or Article 3.5 of Title 25, C.R.S., to provide health care services.

13. "Medication" means any prescription or nonprescription drug as defined in section 12-280-103, C.R.S.

14. "Practitioner" means a person authorized by law to prescribe treatment, Medication or medical devices and acting within the scope of such authority.

15. "School" means any institution of primary or secondary education, including preschool and kindergarten.

16. "Supervision" means the provision of guidance and review by a PN, RN, ~~or~~ APRN, or licensed CM for the accomplishment of a nursing task or activity, with initial direction of the task, periodic inspection of the actual act of accomplishing the task or activity, and evaluation of the outcome.

C. CRITERIA FOR DELEGATION

1. Any nursing or Certified Midwife task delegated by the PN, RN, ~~or~~ APRN, or licensed CM shall be:

   a. Within the scope of practice and the area of responsibility of the Delegator;

   b. Within the knowledge, skills, ability and scope of practice of the Delegator;

   c. Of a routine, repetitive nature and shall not require the Delegatee to exercise nursing or midwifery judgment or intervention;

   d. A task that a reasonable and prudent nurse or licensed certified midwife would find to be within generally accepted nursing or midwifery practice;

   e. An act consistent with the health and safety of the Client; and

   f. Limited to a specific Delegatee, for a specific Client, and within a specific time frame, except for Delegation in Schools or Delegation in a Licensed Child Care Facility as described in Section (F) of Rule 1.13.

2. The Delegatee shall not further delegate to another individual the tasks delegated by the PN, RN, ~~or~~ APRN, or licensed CM.

3. The delegated task may not be expanded without the express permission of the Delegator.

4. The Delegator shall assure that the Delegatee can and will perform the task with the degree of care and skill that would be expected of the PN, RN, ~~or~~ APRN, or licensed CM.

5. The delegation of a nursing- or Certified Midwife task shall not limit the practice of nursing or of licensed certified midwife as defined in sections 12-255-104(7.5), (9) or (10), C.R.S., by any licensed certified midwife or nurse including, but not limited to, advanced practice registered nurses.

D. RESPONSIBILITY OF THE DELEGATOR

1. The decision to delegate shall be based on the Delegator's assessments of the following:

   a. The Client's nursing or midwifery care needs, including, but not limited to, complexity and frequency of the nursing or midwifery care, stability of the Client, and degree of immediate risk to the Client if the task is not carried out;

   b. The Delegatee's knowledge, skills and abilities after training has been provided;

   c. The nature of the task being delegated including, but not limited to, degree of invasiveness, irreversibility, predictability of outcome, and potential for harm;

   d. The availability and accessibility of resources, including but not limited to, appropriate equipment, adequate supplies and appropriate other health care personnel to meet the Client's nursing or midwifery care needs; and

   e. The availability of adequate Supervision of the Delegatee.

2. The Delegator shall:

   a. Explain the Delegation to the Delegatee and that the delegated task is limited to the identified Client within the identified time frame;

   b. As appropriate, either instruct the Delegatee in the delegated task and verify the Delegatee's competency to perform the delegated nursing or Certified Midwife task, or verify the Delegatee's competence to perform the delegated nursing or Certified Midwife task;

   c. Provide instruction on how to intervene in any foreseeable risks that may be associated with the delegated task;

   d. Provide appropriate and adequate Supervision to the Delegatee to the degree determined by the Delegator, based on an evaluation of all factors indicated in Section (D)(1) in Rule 1.13; and

   e. If the delegated task is to be performed more than once, develop and employ a system for ongoing monitoring of the Delegatee.

3. The Delegator, on an ongoing basis, shall evaluate the following:

   a. The degree to which nursing or midwifery care needs of the Client are being met;

   b. The performance by the Delegatee of the delegated task;

c. The need for further training and/or instruction; and

d. The need to continue or withdraw the Delegation.

4. Documentation of the Delegation by the Delegator in the Client record shall adhere to generally accepted standards and shall minimally include, but not be limited to, the following:

a. Assessment of the Client;

b. Identification of the task delegated, the Delegatee, the Delegator, time delegated, and time frame for which the Delegation is effective;

c. Direction for documentation by the Delegatee that the task or procedure was performed and the Client's response, if appropriate; and

d. Periodic evaluation of the Client's response to the performed delegated task.

E. STANDARDS FOR THE ACCOUNTABILITY OF THE DELEGATOR

1. The Delegator shall adhere to the provisions of the Nurse and Nurse Aide Practice Act and the rules and regulations of the Board.

2. The Delegator is accountable for the decision to delegate and the assessments indicated in Section (D)(1) of Rule 1.13.

3. The Delegator is accountable for monitoring, outcome evaluation, and follow-up of each Delegation.

4. The Delegator is accountable for the act of delegating and supervising.

F. DELEGATION OF THE ADMINISTRATION OF MEDICATIONS IN SCHOOLS AND LICENSED CHILD CARE FACILITIES

1. A RN or APRN employed or contracted by a School or Licensed Child Care Facility may delegate the administration of prescription and non-prescription medication with an order from an appropriate health care provider to a specific Delegatee(s) who has successfully completed appropriate training for the population of a School or Licensed Child Care Facility, within a specific time frame not to exceed one school year.

2. A RN or APRN employed by or contracted by a School, school district or Licensed Child Care Facility may delegate the administration of prescribed emergency medications to one or more specific Delegatee(s) who have successfully completed appropriate training. The professional nurse must provide to the Delegatee a specific written protocol for each specific Client as determined in the IHP.

3. A professional nurse shall not delegate to a delegatee the administration of any medication that requires nursing assessment, judgment, or evaluation before, during or immediately after administration.

4. Nothing in this Section (F) of Rule 1.13 shall be construed to prohibit a professional nurse or advanced practice registered nurse from delegating a specific nursing task to a specific Delegatee for a specific Client in the School or Licensed Child Care Facility setting, as otherwise provided for and governed by the provisions of Rule 1.13.

5. The administration of stock Epinephrine and/or Naloxone by designated personnel is not a delegated nursing function and is described in Section (H)(4) of Rule 1.13.

G. DELEGATION OF INSULIN AND GLUCAGON ADMINISTRATION IN THE SCHOOL SETTING, LICENSED CHILD CARE FACILITY OR DDN SETTING

1. The administration of insulin or glucagon is a nursing task that may be delegated in accordance with the requirements of Rule 1.13. The selection of the type of insulin and dosage levels shall not be delegated.

2. An IHP shall be developed for any Client receiving insulin in the School, Licensed Child Care Facility or DDN Setting. Delegation of tasks for Clients with diabetes shall be confined to procedures that do not require nursing assessment, judgment, evaluation or complex skills.

    a. By example, but not limited to the following list, the IHP may include:

        (1) Carbohydrate counting

        (2) Glucose testing

        (3) Activation or suspension of an insulin pump

        (4) Usage of insulin pens

        (5) Medical orders

        (6) Emergency protocols related to glucagon administration

3. Insulin administration by the Delegatee shall only occur when the Delegatee has followed the guidelines of the IHP.

    a. Dosages of insulin may be administered by the Delegatee as designated in the IHP.

    b. Non-routine, correction dosages of insulin may be given by the Delegatee only after:

        (1) Following the guidelines of the IHP; and

(2) Consulting with the Delegator, as designated in the IHP, and verifying and confirming the type and dosage of insulin being administered.

c. Under Section (G)(3) of Rule 1.13, insulin administration by the Delegatee is limited to a specific Delegatee, for a specific Client and for a specific time.

4. When the Delegator determines that the Client is capable of self-administration, as documented in the IHP, the Delegator may delegate to the Delegatee as designated in the IHP the verification of insulin dosage via pump or other administration route.

5. When the Client is not capable of self-administration, routine daily meal boluses of insulin, based on carbohydrate counts and blood glucose levels, may be administered via the insulin pump by the Delegatee as designated in the IHP.

H. EXCLUSIONS FROM THE RULE 1.13

1. Any person registered, certified, licensed, or otherwise legally authorized in this state under any other law engaging in the practice for which such person is registered, certified, licensed, or authorized.

2. Any person performing a task legally authorized by any person registered, certified, or licensed in this state under any other law to delegate the task.

3. The professional nurse who teaches the Medication Administration Instructional Program as approved by the Colorado Department of Human Services shall not be considered to be delegating as defined by Rule 1.13.

4. The professional nurse or advanced practice registered nurse who teaches stock epinephrine auto-injection and/or stock Naloxone administration to designated school staff that act in an emergency situation to assist a Client shall not be construed to be delegating as defined by Rule 1.13.

5. The issuance by an advanced practice registered nurse with prescriptive authority of standing orders and protocols for the use of epinephrine auto-injectors for emergency use to designated school staff shall not be construed to be delegating as defined by Rule 1.13.

6. Any child care provider as defined in section 26-6-102(6), C.R.S., acting in compliance with Section 26-6-119, C.R.S., and any rules enacted pursuant to that section. Such child care provider must:

a. Have successfully completed a medication administration instructional program that is approved by the Colorado Department of Human Services;

b. Have daily physical contact with the parent or guardian of the client to whom medications are administered;

c. Administer only routine medications and only in compliance with rules promulgated by the state Board of Human Services;

d. In emergency situations requiring the administration of unit dose epinephrine, comply with any protocols written by the prescribing health care professional; and

e. Administer a nebulized inhaled medication only in compliance with protocols written by the prescribing health care professional that identify the need for such administration.

7. School personnel that volunteer to administer or assist in the administration of medical marijuana in non-smokeable form to any student with a valid recommendation for medical marijuana pursuant to section 22-1-119.3, C.R.S.

I. CNA EXPANDED SCOPE OF PRACTICE / NOT CONSIDERED DELEGATION OF NURSING TASKS

1. The following tasks included in the CNA's expanded scope of practice as set forth in section 12-255-206(1)(a), (b), and (c), C.R.S., are not considered delegated nursing tasks provided that a RN or APRN has deemed the CNA competent to perform such tasks:

a. Digital stimulation, insertion of a suppository, or the use of an enema, or any other medically acceptable procedure to stimulate a bowel movement for clients/patients with stable health conditions and are not considered high risk;

b. Gastrostomy-tube and jejunostomy-tube feedings for clients/patients with stable health conditions and are not considered high risk; and

c. Placement in a client's mouth of presorted medication that has been boxed or packaged by a PN, RN, or APRN, or a Pharmacist for clients/patients with stable health conditions and are not considered high risk.

(1) The CNA may only perform this task if the boxed or packaged medication has been stored in a secure manner and showing no sign of tampering.

(2) The CNA will report any medication not placed in the client's mouth in a timely manner but not more than two hours after the medication was due.

(3) In the case of liquid medication that has been sorted by the minor's parent or guardian, such medication must be in its original sealed container and a standard measuring device must be used.

(4) The first dose of an antibiotic sorted by a minor's parent or guardian must be under the observation of a professional nurse, physician, podiatrist, or dentist who is present in the same patient care area.

(5) Administration of oxygen as authorized by a health care provider.

(6) Changing ostomy bags.

2. The CNA, pursuant to the definition of nurse aide at section 12-255-104(8.5), C.R.S., requires supervision of tasks by an Licensed Health Care Provider acting within the scope of the license or certificate.

3. A RN or APRN who in good faith determines that a CNA is competent to perform the tasks listed in Section (I)(1) of Rule 1.13 is not liable for the actions of the CNA in the performance of the tasks.

   a. The RN or APRN deeming a CNA competent to perform tasks listed in Section (I)(1) of Rule 1.13 will have the knowledge, skills and ability to perform such skills and teach such skills.

   b. For the purposes of this Rule, "is not liable" means the actions of the CNA in the performance of the expanded scope listed in Section (I)(1) of Rule 1.13 shall not form the basis for discipline for the RN or APRN pursuant to 12-255-120(1), C.R.S.

4. A RN or APRN may determine a CNA is competent to perform the tasks listed in Section (I)(1) of Rule 1.13 by teaching such task, demonstration of clinical performance of the task followed by return demonstration of the performance of the task by the CNA:

   a. Teaching of the procedure to perform the task;

   b. RN or APRN demonstration of the steps to perform the task;

   c. Review of risks associated with performance of the task;

   d. Identification of what to report to the supervising healthcare professional; and

   e. Return demonstration of the clinical performance of the task.

   f. Digital stimulation, insertion of a suppository, or the use of an enema, or any other medically acceptable procedure to stimulate a bowel movement for clients/patients with stable health conditions and are not considered high risk;

      (1) The RN will include within the teaching of this task that it will only be performed for clients/patients with stable health conditions and are not considered high risk.

   g. Gastrostomy-tube and jejunostomy-tube feedings for clients/patients with stable health conditions and are not considered high risk;

      (1) The RN or APRN will include within the teaching of this task that it will only be performed for clients/patients with stable health conditions and are not considered high risk.

h. Placement in a client's mouth of presorted medication that has been boxed or packaged by a PN, RN, APRN, or a Pharmacist for clients/patients with stable health conditions and are not considered high risk.

(1) The RN or APRN will include within the teaching of this task that it will only be performed for clients/patients with stable health conditions and are not considered high risk.

i. When the RN or APRN deems the CNA competent to perform a task, a competency document will be completed. The competency document will be signed, dated and retained for at least one year by the RN determining competency. The competency document will be signed, dated and retained permanently by the CNA deemed competent to perform such tasks.

j. Within thirty days of being deemed competent to perform the tasks in Section (I)(1) of Rule 1.13 the CNA will update the expanded scope questions on the Healthcare Professions Profile (HPPP) indicating the tasks the CNA has been deemed competent to perform, the name and license number of the RN or APRN that deemed the CNA competent, along with the date deemed competent.

5. The RN or APRN must deem the CNA competent to perform the tasks in Section (I)(1) of Rule 1.13 as evidenced by a competency document as described in Section (I)(4) of Rule 1.13 signed, dated and retained for at least one year by the RN or APRN determining competence. The competency document will be signed, dated and retained permanently by the CNA deemed competent to perform such task. The competency document will be produced upon Board request.

6. Continued Competence of the CNA to perform tasks in Section (I)(1) of Rule 1.13

a. Not less than annually the CNA must demonstrate continued competence under the direct clinical observation of the RN or APRN to perform the tasks in Section (I)(1) of Rule 1.13. Upon determination of the continued competence and the CNA demonstrating continued competence an updated competency document will be signed, dated and retained for at least one year by the RN or APRN determining continued competence. The updated competency document will be signed, dated and retained permanently by the CNA demonstrating continued competence. The competency document will be provided to the Board upon request.

b. Within thirty days of the completion of the updated competency document the CNA will update the expanded scope questions on the HPPP indicating the tasks the CNA has continued competence to perform, along with the name and license number of the RN or APRN that deemed continued competence and the date of such completion.

7. Nothing in this Section (I) of Rule 1.13 will be construed to prohibit or impede a facility, agency or employer from establishing policies and procedures for the tasks set forth in Section (I)(1) of Rule 1.13, provided these minimum requirements are met.

Adopted: April 28, 2010
Effective: June 30, 2010
Revised: April 22, 2014
Effective: June 14, 2014
Revised: July 21, 2015
Effective: September 14, 2015
Revised: April 26, 2017
Effective: 6/14/2017
Revised: October 27, 2021
Effective: December 30, 2021

…

1.16 DUTY TO REPORT REQUIREMENTS

A. **BASIS**: The authority for the promulgation of these rules and regulations by the State Board of Nursing is set forth in sections 12-20-204(1), 12-255-107(1)(j), 12-255-120(1)(b) and (z), 12-255-209(1)(b) and (u), and 12-295-111(1)(b), C.R.S.

B. **PURPOSE**: The purpose of these rules and regulations is to set forth the requirements and procedures of reporting convictions for Nurse Aides, Psychiatric Technicians, Practical Nurses, ~~and~~ Professional Nurses, and licensed Certified Midwives in the State of Colorado.

C. **REPORTING CONVICTIONS**

1. Any individual licensed or certified pursuant to sections 12-255-104(3.2), 12-255-104(3.3), 12-295-103(4), 12-255-104(7) and (11), C.R.S., shall inform the Board, in a manner set forth by the Board, within thirty days of the following occurrences in the case of a licensed individual, and within forty-five days of the following occurrences in the case of a certified individual:

   a. The conviction of the certificate holder or licensee of a crime as defined in Title 18 of the Colorado Revised Statutes.

   b. For purposes of these Rules: a conviction includes a plea of guilty or a plea of nolo contendere (no contest), accepted by the court, or the imposition of a deferred judgment/sentence.

2. The notice to the Board shall include the following information:

   a. The Court;

   b. The Jurisdiction;

   c. The case name;

   d. The case number:

   e. A description of the matter or a copy of the indictment of charges; and

f. Terms of sentence given upon conviction.

3. The Board may initiate a complaint pursuant to sections 12-255-119 and 12-255-212, C.R.S.

4. This Rule applies to any conviction or plea as described in Section (C)(1) of Rule 1.16 that occurred on or after October 1, 2008.

D. **REPORTING JUDGMENTS, SETTLEMENTS, ADVERSE ACTIONS, AND SURRENDERS**

1. Any individual licensed pursuant to sections 12-295-103(4), 12-255-104(7) and (11), C.R.S., shall report to the Board in writing, in a manner set forth by the Board, within thirty days of the following occurrences:

a. A final judgment or settlement in a court of competent jurisdiction regarding allegations of malpractice of nursing

b. An adverse action taken against the individual by another licensing agency in another jurisdiction, a peer review body, a health care institution, a professional or nursing or Certified Midwife society or association, a governmental agency, an law enforcement agency, or a court for acts or conduct that would constitute grounds for disciplinary or adverse action as described in Article 255, C.R.S.

c. The surrender of a license or other authorization to practice nursing or as a Certified Midwife in another jurisdiction or the surrender of membership on any nursing staff or professional nursing association or society, which surrender occurs while the individual is under investigation by any of such organizations or authorities for acts or conduct similar to acts or conduct that would constitute grounds for action as described in Article 255, C.R.S.

2. The reports described in section D(1) of Rule 1.16 shall include the following information:

a. If the reportable event concerns a judgment or settle regarding allegations of malpractice, the court, the jurisdiction, the case name, the case number, a description of the matter, or a copy of the complaint, and a copy of the verdict, the court decision, or, if settled, the court's order of dismissal.

b. If the reportable event is adverse action taken by an entity reference above, the name of the entity, its jurisdiction, the case name, the docket or proceeding or case number by which it is designated, a description of the matter, or a copy of the document initiating the action or proceeding and, if the matter has been adjudicated or settled, a copy of the consent decree, order, or decision.

c. If the reportable event is the surrender of a license or other authorization to practice, a copy of all relevant documents disclosing the reason for and circumstances of the surrender

E. **Failure to comply with this rule may constitute grounds for disciplinary action.**

Adopted: July 30, 2008
Effective: October 1, 2008
Revised: October 24, 2012
Effective: December 15, 2012
Revised: October 27, 2021
Effective: December 30, 2021

…

~~**1.18 RULES AND REGULATIONS CONCERNING REPORTING REQUIREMENTS [Repealed eff. 10/01/2007]**~~

1.1~~8~~9 RULES AND REGULATIONS FOR THE CERTIFIED NURSE AIDE IN RELATION TO MEDICATION AIDE AUTHORITY

…

1.19~~20~~ RULES AND REGULATIONS FOR MULTISTATE NURSE LICENSURE

…

~~**1.21 RULES AND REGULATIONS REGARDING LIABILITY INSURANCE FOR ADVANCED PRACTICE REGISTERED NURSES ENGAGED IN INDEPENDENT PRACTICE [Repealed eff. 06/30/2010]**~~

~~**This Rule is being repealed due to its content being incorporated into the rules and regulations to register professional nurses qualified to engage in advanced practice registered nursing, Rule 1.14.**~~

~~**Repealed Effective June 30, 2010**~~

1.20~~2~~ RULES AND REGULATIONS REGARDING THE DESIGNATION OF AUTHORIZED ENTITIES TO CONDUCT PROFESSIONAL REVIEW OF ADVANCED PRACTICE REGISTERED NURSES AND LICENSED CERTIFIED MIDWIVES

A. **BASIS:** The authority for promulgation of rules and regulations by the State Board of Nursing ("Nursing Board") is set forth in sections 24-4-103, 12-30-201(1), 12-30-204(5), 12-30-204(6), 12-20-204(1), and 12-255-107(1)(j), C.R.S.

B. **PURPOSE:** These rules and regulations have been adopted by the Nursing Board to:

1. Establish procedures necessary to designate specialty societies as authorized entities that are able to establish professional review committees, as required by section 12-30-204(5)(f), C.R.S.

2. Establish procedures necessary to designate organizations that are authorized to insure persons licensed under Colorado Revised Statutes Title 12, Article 255 and granted authority as licensed Certified Midwives or as advanced practice registered nurses

("Advanced Practice Registered Nurses") as authorized entities that are able to establish professional review committees, as required by section 12-30-204(5)(h), C.R.S.

3. Establish procedures necessary to authorize other health care organizations, physician organizations or professional societies as authorized entities that may establish professional review committees as permitted by section 12-30-204(6), C.R.S.

C. DESIGNATIONS: In order to be designated by the Nursing Board as an authorized entity entitled to establish professional review committees, an entity must:

1. Have in place written procedures that are in accordance with Colorado Revised Statutes Title 12, Article 30 and that have been approved by the authorized entity's governing board.

2. Have a governing board that registers with the Division of Professions and Occupations in accordance with section 12-30-206, C.R.S.

3. Report to the Nursing Board and the Division of Professions and Occupations in accordance with Colorado Revised Statutes Title 12, Article 30.

4. Provide an affidavit, upon request from the Board:

   a. that the authorized entity's professional review committee has at least one licensed Certified Midwife or one Advanced Practice Registered Nurse as a voting member with a scope of practice similar to that of the person who is the subject of a professional review; or

   b. that the professional review committee has engaged an Advanced Practice Registered Nurse or a licensed Certified Midwife, not previously involved in the review, to perform an independent review as appropriate with a scope of practice similar to that of the person being reviewed.

5. Be one of the following entities:

   a. A society or association of Advanced Practice Registered Nurses or of Certified Midwives designated by the Nursing Board in accordance with and compliance with sections 12-30-204(3) and 12-30-204(5)(f), C.R.S. The Nursing Board designates societies or associations of Advanced Practice Registered Nurses and of Certified Midwives that establish:

      (1) Members are licensed to practice under Colorado Revised Statutes Title 12, Article 255 and granted license as Certified Midwife or authority as Advanced Practice Registered Nurses as appropriate and residing in the state of Colorado;

      (2) Members specialize in a distinct and recognizable discipline midwifery or of nursing in a specified nursing role and population focus. Such specialization may be shown by establishing that:

(a) Such group is recognized by the national certifying body of said population and focus; or

(b) The specialty society or association must provide the Nursing Board with a description of that society's or association's requirements for membership at the time it seeks designation. The society or association must show that its membership is open to all practitioners in the state of Colorado, and that such individual whose services are being reviewed is a member of the society or association.

b. A corporation authorized to insure licensed Certified Midwives or Advanced Practice Registered Nurses designated by the Nursing Board in accordance with section 12-30-204(5)(h), C.R.S. The Nursing Board designates those corporations that are a professional liability insurer authorized to do business in Colorado under the provisions of section 10-3-105, C.R.S.

c. A health care or provider organization or professional society designated by the Nursing Board in accordance with section 12-30-204(6), C.R.S. The Nursing Board designates health care or provider organizations or professional societies with:

(1) A membership that includes licensed Certified Midwives or Advanced Practice Registered Nurses; and

(2) Has as a voting member at least one person licensed under Colorado Revised Statutes Title 12, Article 255 and granted authority as an Advanced Practice Registered Nurse with a scope of practice similar to the person who is the subject of the review; and

(3) Members are licensed in accordance with Colorado Revised Statutes, Title 12, Article 255, and reside in the State of Colorado; and

(4) Members are representatives of practitioners in the same discipline as the person who is the subject of the review; and

(5) The health care or organization or professional society must provide the Nursing Board with a description of that society's or association's requirements for membership at the time it seeks designation.

Adopted: April 23, 2013
Effective: June 14, 2013

1.2~~1~~3 RULES AND REGULATIONS REGARDING THE REPORTING REQUIREMENTS OF SECTIONS 12-30-204(8)(f) AND SECTION 12-30-206(2)(b)(II), C.R.S., AND OF THE FEDERAL HEALTH CARE QUALITY IMPROVEMENT ACT OF 1986, AS AMENDED

A. **BASIS:** The authority for promulgation of rules and regulations by the State Board of Nursing ("Nursing Board") is set forth in sections 24-4-103, 12-30-201(1)(a), 12-30-204(5), 12-30-203(1)(b), 12-30-203(3)(a), and 12-30-208(2), C.R.S.

B. **PURPOSE:** These rules have been adopted by the Nursing Board to clarify reporting requirements so that the Nursing Board is able to effectively and efficiently utilize and allow professional review committees and governing boards, in order to meet the Nursing Board's responsibilities under Colorado Revised Statutes Title 12, Article 30. These Rules will enable the Nursing Board to more effectively regulate the conduct of the practice of nursing or midwifery of those individuals licensed under Colorado Revised Statutes Title 12, Article 255 and granted authority as advanced practice registered nurses or licensed Certified Midwives by encouraging prompt, accurate, and complete reporting by governing boards of authorized entities ("Authorized Entities") and their professional review committees. Reporting to the Nursing Board is required:

1. As obligated under:

   a. The federal "Health Care Quality Improvement Act of 1986", as amended as required by section 12-30-208(2), C.R.S.; and

   b. The Professional Review of Health Care Providers as required by sections 12-30-204(8)(f) and 12-30-204(10), C.R.S.; and

   c. The Professional Review of Health Care Providers as required by section 12-30-206(2)(b)(II), C.R.S.

2. In response to a subpoena issued by the Nursing Board in accordance with section 12-30-204(11), C.R.S.

C. **REPORTING:** In order for an Authorized Entity to be considered in compliance with the reporting requirements of this Rule:

1. Reports required under part (B)(1)(a) and (b) of this Rule 1.23, must be submitted to the Nursing Board within thirty calendar days of the reportable recommendation, finding, or adverse action.

2. Reports required under part (B)(1)(c) of this Rule 1.23, must be submitted to the Nursing Board no later than the 1st day of March of each year for the information from the preceding calendar year.

3. Copies of reports must be sent to the Nursing Board's office by U.S. mail or via electronic mail to the Program Director of the Nursing Board.

4. The Nursing Board delegates authority to the Program Director of the Nursing Board to receive the reporting information on its behalf, to compile information required by section 12-30-206(2)(b)(II), C.R.S. for the Division of Professions and Occupations and to resolve reporting discrepancies and irregularities directly with the reporting entity.

Adopted: April 23, 2013
Effective: June 14, 2013

1.224 RULES AND REGULATIONS CONCERNING RESPONSIBILITIES OF ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY WHO ENGAGE IN DRUG THERAPY MANAGEMENT WITH A COLORADO LICENSED PHARMACIST

…

1.235 RULES AND REGULATIONS REGARDING CONTINUING EDUCATION AND/OR TRAINING

A. **BASIS:** These Rules and Regulations are adopted by the State Board of Nursing ("Board") pursuant to sections 12-30-114 and 12-255-129, C.R.S.

B. **PURPOSE:** The purpose of these rules and regulations is to require advanced practice registered nurse with prescriptive authority or licensed Certified Midwives with prescriptive authority to complete training to demonstrate competency in various aspects of substance use prevention.

C. **SUBSTANCE USE PREVENTION TRAINING FOR LICENSE RENEWAL, REACTIVATION, OR REINSTATEMENT**

1. Pursuant to section 12-30-114, C.R.S., every advanced practice registered nurse with prescriptive authority or licensed Certified Midwife with prescriptive authority, except those exempted under Section (C)(3) of Rule 1.25, is required to complete at least two hours of training per renewal period in order to demonstrate competency regarding the topics/areas specified in section 12-30-114(1)(a), C.R.S.

2. Training, for the purposes of this section includes, but is not limited to, relevant continuing education courses; self-study of relevant scholarly articles or relevant policies/guidelines; peer review proceedings that involve opioid prescribing; relevant volunteer service; attendance at a relevant conference (or portion of a conference); teaching a relevant class/course; or participation in a relevant presentation, such as with your practice. All such training must cover or be related to the topics specified in section 12-30-114(1)(a), C.R.S.

3. The Board shall exempt an advanced practice registered nurse with prescriptive authority or licensed Certified Midwife with prescriptive authority from the requirements of this section who qualifies for either exemption set forth in section 12-30-114(1)(b), C.R.S.

4. This section shall apply to any advanced nurse with prescriptive authority or licensed Certified Midwife with prescriptive authority applying for reinstatement of prescriptive authority pursuant to Section (K) of Rule 1.15.

5. Applicants for renewal or reinstatement shall attest during the application process to either their compliance with this substance use training requirement or their qualifying for an exemption, as specified in Section (C)(3) of Rule 1.25.

6. The Board may audit compliance with this section. Advanced practice registered nurses with prescriptive authority or licensed Certified Midwives with prescriptive authority should be prepared to submit documentation of their compliance with this substance use training requirement or their qualification for an exemption, upon request by the Board.

…

~~**1.26 [Emergency rule expired 05/09/2023]**~~

~~**1.27 [Emergency rule expired 05/09/2023]**~~

~~**1.28 [Emergency rule expired 05/09/2023]**~~

1.2~~4~~9 REQUIRED DISCLOSURE TO PATIENTS – CONVICTION OF OR DISCIPLINE BASED ON SEXUAL MISCONDUCT (Section 12-30-115, C.R.S)

…

1.2~~5~~30 ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES BY ADVANCED PRACTICE NURSES WITH PRESCRIPTIVE AUTHORITY

…

C. On or after July 1, 2021 and pursuant to section 12-30-111(1)(a), C.R.S., a prescriber, which is an advanced practice nurse with prescriptive authority or a licensed Certified Midwife with prescriptive authority, shall prescribe a controlled substance as set forth in section 12-30-111(1)(a), C.R.S., only by electronic prescription transmitted to a pharmacy unless an exception in section 12-30-111(1)(a), C.R.S., applies.

…

1.2~~6~~31 RULES REGARDING THE USE OF BENZODIAZEPINES

…

C. These rules do not require or encourage abrupt discontinuation, limitation, or withdrawal of benzodiazepines. Licensees are expected to follow generally accepted standards of advanced practice nursing with prescriptive authority or of licensed Certified Midwives with prescriptive authority as appropriate, based on an individual patient's needs, in tapering benzodiazepine prescriptions.

1.2~~7~~32 CONCERNING HEALTH CARE PROVIDER DISCLOSURES TO CONSUMERS ABOUT THE POTENTIAL EFFECTS OF RECEIVING EMERGENCY OR NONEMERGENCY SERVICES FROM AN OUT-OF-NETWORK PROVIDER

…

1.28 RULES AND REGULATIONS FOR LICENSURE OF CERTIFIED MIDWIVES

A. **BASIS:** The authority for the promulgation of these rules and regulations by the State Board of Nursing is set forth in sections 12-20-202(3), 12-20-204(1), 12-255-107(1)(b), (d), and (j), 12-255-109, 12-255-110, 12-255-11.5, 12-255-114, 12-255-115, 12-255-121, and 12-255-122, C.R.S.

B. **PURPOSE**: To specify requirements for obtaining and maintaining Certified Midwife licensure.

C. **DEFINITIONS**:

For the purposes of Rule 1.28, the following terms have the indicated meaning:

1. Applicant: Any individual seeking a license to practice as a Certified Midwife in the State of Colorado.

2. Board: The Colorado State Board of Nursing.

3. Certified Midwife (CM) means an individual who meets the qualification for practice as a certified midwife and holds an active certificate from The American Midwifery Certification Board (AMCB) or its successor entity.

4. Certification Board: A non-governmental agency approved by the Board that validates by examination, based on pre-determined standards, an individual's qualifications and knowledge for practice as a Certified Midwife.

5. Good Standing means unencumbered or no current restrictions on a license to practice.

6. Licensure: Includes the authority to practice as a Certified Midwife granted through the process of examination, endorsement, renewal, reinstatement and/or reactivation

7. Independent Practice: The practice of Certified Midwife as defined in section 12-255-104(7.5), C.R.S. for which the licensed Certified Midwife is solely responsible and performs on his/her own initiative, and which occurs in a setting for which no exception as set forth in Section (J)(2) of Rule 1.35 applies.

D. **REQUIREMENTS FOR ALL APPLICANTS**

1. Must submit a CM application in a manner approved by the Board.

2. Pay application fee.

3. Submit proof of certification from the American Midwifery Certification Board as evidence of passing the AMCB Certification exam from the American Midwifery Certification Board or its successor entity in a manner approved by the Board.

4. Submit fingerprints for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the Colorado Bureau of Investigation responsible for retaining the state's criminal records set forth in 12-255-111.5 C.R.S.

5. Attest to registration with the prescription drug monitoring program as required by 12-280-403 (2)(a).

E. **APPROVED EXAMINATION FOR ORIGINAL LICENSING**

1. The American Midwifery Certification Board (AMCB) Certification Exam is the required examination in the Licensure process. An Applicant must achieve a passing score as

determined by AMCB and certified in order to be eligible for Licensure as a Certified Midwife.

F. **LICENSURE BY ENDORSMENT**

1. Pursuant to the Occupational Credential Portability Program under section 12-20-202(3), C.R.S., an Applicant is entitled to Licensure as a Certified Midwife by endorsement in Colorado if the Applicant has met the requirements of Sections (D)(1), (2), (E) (2) of Rule 1.28 and is currently licensed in Good Standing in another state or U.S. territory.

a. The Applicant:

(1) Has substantially equivalent experience or credentials that are required by Article 255 of Title 12, C.R.S.; or

(2) Has held for at least one year a current and valid license as a Certified Midwife in a jurisdiction with a scope of practice that is substantially similar to the scope of practice for certified midwives specified in Article 255 of Title 12, C.R.S.

2. The Board may deny such license if:

a. The Board demonstrates by a preponderance of evidence, after notice and opportunity for a hearing, that the Applicant:

(1) Lacks the requisite substantially equivalent education, experience, or credentials for a license; or

(2) Has committed an act that would be grounds for disciplinary action under Article 255 of Title 12, C.R.S.

G. **REINSTATEMENT AND REACTIVATION**

1. A licensee who does not renew his or her license within the 60 day grace period, as set forth in section 12-20-202 (1) (e) C.R.S., will have an expired license and will be ineligible to practice until such license is reinstated.

2. A licensed Certified Midwife may elect inactive status in accordance with section 12-255-122, C.R.S. A licensee may not apply for inactive status to avoid disciplinary action. Upon inactivation any and all authorities attached to the license will be cancelled.

3. The licensee must apply for reinstatement or reactivation in a manner approved by the Board.

4. The licensee applying for reinstatement or reactivation must pay the application fee.

5. A licensee who has practiced on an expired or inactive license may be subject to disciplinary action.

6. A licensee whose Certified Midwife license has been expired or inactive must comply with section D.3. and D.4. of this Rule 1.28.

7. The application for reinstatement or reactivation shall be denied if the Board determines:

a. The Certified Midwife reinstatement or reactivation applicant has not actively practiced as a Certified Midwife in another state for the two-year period immediately preceding application, or

b. The reinstatement or reactivation applicant does not provide evidence of an active certificate from the American Midwifery Certification Board (AMCB) or its successor entity.

H. **VOLUNTEER LICENSURE**

1. Applicants for Volunteer Licensure must meet all requirements of section 12-255-115, C.R.S.

a. Currently holds a license to practice as a Certified Midwife, and the license is due to expire unless renewed; or

b. Is currently not engaged in the practice as a Certified Midwife either full-time or part-time and has, prior to ceasing practice, maintained full Licensure in Good Standing in any state or territory of the United States.

2. A licensee in volunteer status in accordance with section 12-255-115, C.R.S., may apply to reinstate to active status. The reinstatement application must be submitted as described in Section G. 3 and G. 4 of Rule 1.35 and the Applicant must demonstrate competency by the following:

a. Proof they have actively volunteered as a Certified Midwife during the two- year period immediately preceding application; and

b. Submit proof of active certification from the American Midwifery Certification Board or its successor entity in a manner approved by the Board.

I. **REQUIREMENTS FOR PROFESSIONAL LIABILITY INSURANCE**

1. Pursuant to the requirements of section 12-255-113(1), C.R.S., it is unlawful for any licensed Certified Midwife to engaged in an Independent Practice of midwifery to practice within the state of Colorado unless the licensed Certified Midwife purchases and maintains or is covered by professional liability insurance in an amount not less than five hundred thousand dollars per claim with an aggregate liability for all claims during the year of one million five hundred thousand dollars.

2. Pursuant to these rules, a licensed Certified Midwife whose Independent Practice falls entirely within one or more of the following categories is exempt from the professional liability insurance requirements set forth in section 12-255-113, C.R.S.:

a. A federal civilian or military Certified Midwife whose practice is limited solely to that required by his or her federal/military agency.

b. A licensed Certified Midwife who is covered by individual professional liability coverage (or an alternative which complies with section 12-255-113(1), C.R.S.) or liability insurance that is maintained by an employer/contracting agency in the amounts set forth in section 12-255-113(1), C.R.S.

c. A licensed Certified Midwife who provides uncompensated health care; or

d. A licensed Certified Midwife who practices as a public employee under the "Colorado Governmental Immunity Act, sections 24-10- 101 to 118, C.R.S."

3. In order to establish eligibility for an exemption from the statutory financial responsibility requirements, a licensed Certified Midwife must provide such information as may be requested by the Board.

4. Failure to maintain professional liability insurance pursuant to section 12-255-113, C.R.S. may be grounds for discipline pursuant to section 12-255-120(1)(aa), C.R.S.

J. **GENERAL GUIDELINES**

1. A licensee who fails to maintain certification, or who practices on an expired or inactive license may be subject to disciplinary action.

2. A licensee who fails to answer application questions accurately, the failure constitutes grounds for discipline under 12-255-120 (1)(v).

3. Any application not completed within one year of the date of receipt of the original application expires and will be purged.

K. **LICENSED CERTIFIED MIDWIFE SCOPE OF PRACTICE**

1. A licensed Certified Midwife scope of practice is set by the American College of Nurse-Midwives (ACNM). The standards and regulations incorporated by reference may be examined at the State Board of Nursing, 1560 Broadway, Suite 1350, Denver, Colorado 80202, during normal business hours, Monday through Friday, except when such days are state holidays. Certified copies of the incorporated standards shall be provided at cost upon request. The Program Director or the Program Director's designee will provide information regarding how the incorporated standards and regulations may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rules as follows: for midwifery scope of practice https://www.midwife.org/acnm/files/acnmlibrarydata/uploadfilename/000000000266/DefDefinition%20Midwifery%20Scope%20of%20Practice_2021.pdf (effective 2021); and Core Competencies for Basic Midwifery Practice (2020) https://www.midwife.org/acnm/files/acnmlibrarydata/uploadfilename/000000000050/ACNMCoreCompetenciesMar2020_final.pdf. (effective 2020)

2. Certified Midwifery is not the practice of nursing.

L. **CHANGE OF NAME AND ADDRESS**

1. The licensee must supply the Board legal evidence of a name change within 30 days of the effective date of the name change.

2. The licensee must notify the Board within 30 days of any change of address. This notification may be submitted in writing or through the Board's on-line system.

3. Any notification by the Board to licensees required or permitted under The Nurse and Nurse Aide Practice Act sections 12-255-101 to 12-255-135, C.R.S., or the State Administrative Procedure Act sections 24-4-104 to 108 C.R.S., will be addressed to the last address provided in writing to the Board by the licensee and any such mailing will be deemed proper service on said licensee

Adopted , Effective ;

1.29 RULES AND REGULATIONS FOR PRESCRIPTIVE AUTHORITY FOR LICENSED CERTIFIED MIDWIVES

A. BASIS: The authority for the promulgation of these rules and regulations by the State Board of Nursing ("Board") is set forth in sections 12-20-204(1), 12-255-107(1)(j), and 12-255-112, C.R.S., of the Colorado Revised Statutes (C.R.S.).

B. **PURPOSE**: Section 12-255-112(4)(a.5), C.R.S. sets forth the legal requirements for a licensed Certified Midwife to obtain prescriptive authority in Colorado. First, the licensed Certified Midwife must obtain Provisional Prescriptive Authority. Generally, those requirements are:

1. Midwife certification in good standing from the American Midwifery Certification Board or its successor entity; and

2. Professional liability insurance coverage of all acts within the scope of practice of a Certified Midwife in the amount of five hundred thousand dollars per claim with an annual aggregate liability for all claims of one million five hundred thousand dollars; and

3. Completion of at least three years of combined clinical work experience as a licensed Certified Midwife.

Upon receiving Provisional Prescriptive Authority, the licensed Certified Midwife is legally authorized to prescribe medications and controlled substances schedules II-V to patients appropriate to the licensed Certified Midwife's Role. Within three years of receiving Provisional Prescriptive Authority the Certified Midwife with Provisional Prescriptive Authority (hereinafter referred to as LCMRX-P) must:

4. Complete a 750 hour Mentorship with a Physician or an Advanced Practice Registered Nurse (APRN) with Full Prescriptive Authority or with a licensed Certified Midwife with Full Prescriptive Authority and experience in prescribing medications. The Physician or

APRN or licensed Certified Midwife shall have education, training, experience and an active practice that corresponds with the Role of the LCMRX-P.

If the LCMRX-P does not complete these additional requirements within three years of receiving Provisional Prescriptive Authority such authority will expire for failure to comply with statutory requirements.

C. **DEFINITIONS**:

1. Advanced Practice Registered Nurse (APRN): A professional nurse who meets the requirements of section 12-255-111, C.R.S., who obtained specialized education or training and is included on the Advanced Practice Registry.

2. Applicant: A Certified Midwife who is licensed seeking Provisional Prescriptive Authority in the Role specified by the American Midwifery Certification Board or its successor entity.

3. Board: The State Board of Nursing.

4. Certified Midwife means an individual who meets the qualifications for practice as a Certified Midwife as specified by the American Midwifery Certification Board or its successor entity and who is currently licensed by the Board.

5. Clinical Work Experience: Any relevant experience accumulated as a licensed Certified Midwife, including paid or unpaid work experience, volunteer work, or student work. The gratuitous care of friends or members of the family is not included in Clinical Work Experience.

6. DEA: Drug Enforcement Administration.

7. Disciplinary Sanction: Any current restriction, limitation, encumbrance or condition on the Physician Mentor's medical license or on the RXN Mentor's nursing license or on the alternative to discipline program authorized by the Mentor's licensing board.

8. Full Prescriptive Authority: The authority granted to the LCMRX to prescribe medications upon completion of the requirements set forth in Section (E)(2) of this Rule.

9. Mentor: Physician Mentor: A person who holds a license to practice medicine in Colorado or a physician who is otherwise exempted from licensure pursuant to section 12-240-107(3)(j), C.R.S. The physician's license must be in good standing without Disciplinary Sanction as defined in Section (C)(7) of Rule 1.36. The Physician Mentor must be actively practicing medicine in the State of Colorado and shall have education, training, experience and a practice that corresponds to the Role of the LCMRX-P. The Physician Mentor must also have an unrestricted DEA registration.

10. Mentor: RXN Mentor: A professional nurse who has met the qualifications for an APRN, is included on Colorado's advanced practice registry, has Full Prescriptive Authority in Colorado, and has experience prescribing medications with full prescriptive authority preceding the beginning of the Mentorship. The RXN Mentor's nursing license must be

without Disciplinary Sanction as defined in Section (C)(7) of Rule 1.36. The RXN Mentor shall have an active practice in Colorado and shall have education, training, experience and a practice that corresponds to the Role of the LCMRX-P. The RXN Mentor must have an unrestricted DEA registration.

11. Mentor: LCMRX Mentor. A Certified Midwife who is licensed and has Full Prescriptive Authority in Colorado and has experience prescribing medications with full prescriptive authority preceding the beginning of the Mentorship. The LCMRX Mentor's license must be without Disciplinary Sanction as defined in Section (C) (7) of Rule 1.36. The LCMRX Mentor shall have an active practice in Colorado and shall have education, training, experience and a practice that corresponds to the Role of the LCMRX-P.The LCMRX Mentor must have an unrestricted DEA registration.

12. Mentorship: A formal, Mutually Structured relationship between the LCMRX-P as defined in Section (C)(13) of Rule 1.36, and the Physician Mentor or RXN Mentor or LCMRX Mentor to further the LCMRX-P's knowledge, skill, and experience in prescribing.

13. Mentorship Agreement: A mutually structured agreement documented in writing and signed by the LCMRX-P and the Mentor(s), which outlines a process and frequency for ongoing interaction and discussion of prescriptive practice throughout the Mentorship between the Mentor(s) and the LCMRX-P to assure safe prescribing practice.

14. Mutually Structured: Developed, implemented, and agree upon by the LCMRX-P and the Mentor(s).

15. Provisional Prescriptive Authority: The authority granted to the Applicant to prescribe medications within the Role and, if applicable, Population Focus of the licensed Certified Midwife pursuant to Section (F)(1) and Section (J)(2) of Rule 1.36

16. Role: The advanced practice area for which the Applicant has been prepared including certified midwife (CM), nurse practitioner (NP), certified nurse midwife (CNM), certified registered nurse anesthetist (CRNA), and/or clinical nurse specialist (CNS).

17. LCMRX: A Certified Midwife who is licensed and has been granted Full Prescriptive

18. LCMRX Provisional (LCMRX-P): A Certified Midwife who is licensed and who has been granted Provisional Prescriptive Authority by the Board.

19. Synchronous Communication: Real-time communication; existing or happening at the same time; occurring at the same moment of time; simultaneous. Synchronous Communication will be conducted in a secure manner to safeguard protected information. Synchronous Communication may include the use of electronic communication tools such as audio, web or video conferencing. Synchronous Communication does not include email communications.

20. Unencumbered: No current restriction to practice in the state of Colorado.

D. **NATIONAL CERTIFICATION REQUIREMENT**

1. Pursuant to section 12-255-112(4)(a)(IV), C.R.S., a licensed Certified Midwife applying for prescriptive authority must obtain and maintain national certification from The American Midwifery Certification Board or its successor entity.

E. **REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY**

1. Requirements for Provisional Prescriptive Authority.

a. Must apply in a manner approved by the Board;

b. Pay application fee;

c. Submit verification of National Certification as described in Section (D) of THIS Rule;

d. An attestation of having professional liability insurance pursuant to section 12-255- 113, C.R.S.

e. An attestation stating the Applicant has completed at least three years of Clinical Work Experience, as defined in Section (C)(5) of this Rule.

f. An attestation stating that the Applicant's Mentor(s) meets requirements in Section (C)(9) or (C)(10) or (C)(11) of this Rule; and

g. Has an active Certified Midwife license that is in good standing and without disciplinary sanctions or significant adverse prescribing as determined by the

2. Requirements for Original Full Prescriptive Authority

a. Submit an application in a manner approved by the Board which includes:

(1) An attestation of successful completion of 750 hours of experience in a Mentorship

b. The application for Full Prescriptive Authority must be submitted within three years of being granted Provisional Prescriptive Authority.

(1) If the LCMRX-P cannot meet the requirements in Section (E)(2)(a) of this Rule, the LCMRX-P may petition the Board for an exception to demonstrate competence. Exceptions will be reviewed on a case-by-case basis. The decision to grant or deny such exception will be at the sole discretion of the Board.

3. Any application not completed within one year of the date of receipt of the application expires and will be purged.

F. **MENTORSHIP REQUIREMENTS**

1. To obtain Full Prescriptive Authority, the LCMRX-P must complete 750 hours of documented experience in a Mentorship. The Mentorship shall be conducted with a Physician Mentor or RXN Mentor or LCMRX Mentor [hereinafter referred to as Mentor(s)] as defined in Sections (C)(9), (C)(10) and (C)(11) of this Rule, respectively. The Mentorship must be completed within three years after Provisional Prescriptive Authority is granted.

    a. For the certified midwife (CM), the mentorship hours must cover the range of practice for the specific role.

    b. This Section (F) does not apply to the LCM with prescriptive authority and at least 750 hours of prescribing experience in another state, US jurisdiction or United States military applying for Full Prescriptive Authority as set forth in Section (H)(2) of this Rule.

2. The Mentorship Agreement shall contain the following elements:

    a. Is documented in writing and signed by the LCMRX-P and the Mentor(s).

    b. Outlines a process, documentation, and frequency for ongoing Synchronous Communication, interaction and discussion of prescriptive practice throughout the Mentorship between the Mentor(s) and the LCMRX-P to provide for safe prescribing practice.

3. The Mentorship Agreement shall be retained for a period of three years by the LCMRX and the Mentor(s) following completion of the Mentorship and shall be available to the Board upon request.

4. The LCMRX-P and the Mentor(s) shall provide documentation of the successful completion of the Mentorship as requested by the LCMRX-P to complete an application to obtain Full Prescriptive Authority. The Mentor(s) shall not, without good cause, withhold his/her signature or otherwise fail to attest to the completion of the Mentorship. Upon submission of the application, the LCMRX- P may be granted Full Prescriptive Authority.

5. If a circumstance such as retirement, illness, relocation or other event precludes any Mentor from continuing in the Mentorship, the LCMRX-P shall secure a replacement Mentor and enter into a new, Mutually Structured Mentorship. Any hours accrued during the period of time in which the LCMRX-P does not have a Mentor will not be credited toward completion of the 750 hour Mentorship.

6. The Mentor(s) shall not require payment or employment as a condition of entering into the mentor relationship. The Mentorship relationship should not be financially burdensome to either party. In recognition of the Mentor(s) time and expertise, reasonable expenses may be paid. Compensation by the LCMRX-P to the Mentor(s) should be agreed upon as part of the Mutually Structured Mentorship, shall comply with standards of fair market value, and shall not be onerous or otherwise present a barrier to completion of the Mentorship.

G. **OTHER REQUIREMENTS**

1. The LCMRX-P or LCMRX must hold a valid DEA registration to prescribe controlled substances, Schedule II through V, and must adhere to all DEA requirements.

2. Pursuant to section 12-255-112(7)(c)(II), C.R.S., nothing in this Rule shall be construed to require a licensed Certified Midwife to obtain prescriptive authority to deliver anesthesia care.

3. Pursuant to section 12-255-112(9), C.R.S., nothing in this Rule shall be construed to permit dispensing or distribution, as defined in section 12-280-103(14) and (15), C.R.S., by the LCMRX, except for receiving and distributing a therapeutic regimen of prepackaged drugs prepared by a licensed pharmacist or drug manufacturer registered with the FDA and appropriately labeled, free samples supplied by a drug manufacturer, and distributing drugs for administration and use by other individuals as authorized by law.

H. **REQUIREMENTS FOR A LICENSED CERTIFIED MIDWIFE WITH PRESCRIPTIVE AUTHORITY IN ANOTHER STATE TO OBTAIN FULL PRESCRIPTIVE AUTHORITY IN COLORADO**

1. Applicants must submit an application in a manner approved by the Board.

2. Applicants must be actively licensed as a Certified Midwife in the Role for which the Applicant seeks Prescriptive Authority.

3. Applicants must have Active Prescriptive Authority in another state or U.S. jurisdiction in the Role for which the Applicant seeks Prescriptive Authority.

   a. Prescriptive Authority credentials issued by the United States Military are deemed to be substantially equivalent to prescriptive authority in another state or jurisdiction.

4. Requirements to apply for Full Prescriptive Authority for applicants with prescriptive authority and at least 750 hours of documented experience prescribing medications in another state, U.S. jurisdiction, or U.S. military:

   a. Verification of prescriptive authority and 750 hours of documented experience prescribing medications, in another state, jurisdiction, or the U.S. military, in a manner approved by the Board. The acceptance of the documented hours of experience prescribing medications is at the sole discretion of the Board; and

5. Requirements to apply for Full Prescriptive Authority for applicants with prescriptive authority and less than 750 hours of documented experience prescribing medications in another state, jurisdiction, or the U.S. military:

   a. Active Provisional Prescriptive Authority granted pursuant to Section (E)(1) of this Rule.

b. Completion of the additional hours, up to at least 750 hours, of experience prescribing medications within a Mentorship as set forth in Section (F) of this Rule.

c. Submission of an application for Full Prescriptive Authority within three years of obtaining Provisional Prescriptive Authority, providing evidence of the following:

(1) Verification of prescriptive authority and hours of documented experience prescribing medications, in another state, in a manner approved by the Board. The acceptance of the documented hours of experience prescribing medication is at the sole discretion of the Board; and

(2) Additional mentored prescribing hours, up to at least 750 hours, completed within a Mentorship in Colorado.

d. Upon petition by the applicant, and with due consideration of the need to protect the public, the Board may accept a substantially equivalent method of establishing the requirements set forth in this Section (H)(5) of this Rule. It is anticipated that such alternative will rarely be used. The decision to accept such substantially equivalent method of establishing the requirements is at the sole discretion of the Board.

I. REINSTATEMENT OF PRESCRIPTIVE AUTHORITY

1. To apply for reinstatement of prescriptive authority the Applicant must possess an active, Colorado Certified Midwife license that is in good standing and without Disciplinary Sanction as defined in Section (C)(7) of this Rule.

2. A Licensed Certified Midwife applying to reinstate Full Prescriptive Authority must complete the reinstatement application for Full Prescriptive Authority and meet the requirements as set forth in Sections (D), (E), (F) and (G) of this Rule.

a. If a licensed Certified Midwife fails to meet the requirements as set forth in section 12-255-112, C.R.S., and the Provisional Prescriptive Authority expires by operation of law, the licensed Certified Midwife must complete a new application for Provisional Prescriptive Authority and meet the current requirements as set forth in Sections (D), (E), and (F) of this Rule.

3. A licensed Certified Midwife whose Provisional or Full Prescriptive Authority is withdrawn as the result of a disciplinary action under section 12-255-119, C.R.S., as set forth in Section (K)(2)(a) of this Rule, shall not be eligible to apply for Prescriptive Authority for two years after the date of the withdrawal of such Prescriptive Authority. After the end of the two year waiting period a licensed Certified Midwife must complete a new application and meet all requirements as set forth in this Rule.

4. Every licensed Certified Midwife with prescriptive authority applying for reinstatement, except those who qualify for an exemption, must fulfill the substance use prevention training requirements set forth in Section (C) of Rule 1.25.

J. **RENEWAL OF PRESCRIPTIVE AUTHORITY**

1. Renewal of Provisional or Full Prescriptive Authority is required at the time of the LCMRX's Certified Midwife license renewal in Colorado. Licensed Certified Midwives granted Provisional or Full Prescriptive Authority by the Board shall be required to renew the Provisional or Full Prescriptive Authority every two years and shall be issued a specific expiration date for the Prescriptive Authority.

2. Every licensed Certified Midwife with prescriptive authority applying for renewal, except those who qualify for an exemption, must fulfill the substance use prevention training requirements set forth in Section (C) of Rule 1.25.

K. **WITHDRAWAL OF PROVISIONAL OR FULL PRESCRIPTIVE AUTHORITY**

1. The LCMRX may request that the Provisional or Full Prescriptive Authority be voluntarily withdrawn.

2. The Board may withdraw Provisional or Full Prescriptive Authority if the licensed Certified Midwife no longer meets the requirements for Provisional or Full Prescriptive Authority or the licensed Certified Midwife is subject to discipline under section 12-255-120, C.R.S., in accordance with the procedures set forth in section 12-255-119, C.R.S.

   a. The licensed Certified Midwife whose Provisional or Full Prescriptive Authority has been withdrawn as a result of disciplinary action under section 12-255-119, C.R.S., shall not be eligible to apply for Prescriptive Authority for two years after the date of the Board's withdrawal of such Prescriptive Authority. For the purpose of this Section (K)(2)(a), withdrawal of Provisional or Full Prescriptive Authority shall include surrender or revocation of same.

3. If Provisional or Full Prescriptive Authority has been withdrawn, and the licensed Certified Midwife wishes to apply for Provisional or Full Prescriptive Authority, the licensed Certified Midwife must file a new application and meet all requirements as set forth in this Rule at the time of application.

L. **DISCIPLINE OF LICENSED CERTIFIED MIDWIVES WITH PRESCRIPTIVE AUTHORITY**

1. LCMRX and LCMRX-P disciplinary proceedings shall be the same as set forth in section 12- 255-119, C.R.S., and the grounds for discipline are as set forth in section 12-255-120, C.R.S.

Adopted , Effective ;

Editor's Notes

History

Chapter 1 eff. 07/02/2007.
Chapters XIII; XX eff 10/01/2007. Chapter XVIII repealed eff. 10/01/2007.
Chapters I, IX, XI eff. 12/31/2007.
Chapter XII repealed eff. 06/01/2008.
Chapters I, VII, XVI eff. 10/01/2008.
Chapters I, XIV, XV eff. 12/30/2008.
Chapter X eff. 03/30/2009.
Chapters IX, XX eff. 06/30/2009.
Chapter XXI emergency rule eff. 07/14/2009
Chapter XXI eff. 10/14/2009.
Chapter II eff. 10/30/2009.
Chapter I eff. 12/30/2009.
Chapter XIX repealed eff. 12/30/2009.
Chapters II, III eff. 03/31/2010.
Chapter XIII eff. 06/30/2010. Chapter XXI repealed eff. 06/30/2010.
Chapters XIV, XV eff. 07/01/2010.
Chapters XII, XIX eff. 01/01/2010.
Chapter VII repealed eff. 03/17/2011.
Chapter I eff. 09/14/2011.
Chapters I, IX eff. 07/01/2012.
Chapter XV eff. 09/14/2012.
Chapters 1, 5, 10, 16, 19 eff. 12/15/2012.
Chapters 1, 2, 5, 10, 19 eff. 03/18/2013.
Chapters 20, 22, 23 eff. 06/14/2013.
Chapters 2, 11, 13 eff. 06/14/2014.
Chapters 10, 13 emer. rules eff. 08/05/2015.
Chapter 15 emer. rule eff. 09/01/2015.
Chapters 10, 13 eff. 09/14/2015.
Chapter 15 eff. 11/14/2015.
Chapter 24 eff. 12/30/2015.
Chapter 2 eff. 06/30/2016.
Chapter 13 eff. 06/14/2017
Chapters 5, 6, 14, 15 eff. 09/14/2017.

Chapter 2 eff. 06/14/2018.
Chapters 1, 20 eff. 03/17/2019.
Rules 1.15 K.4, 1.15 L.2, 1.25 eff. 12/15/2019.
Rule 1.26 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.27 emer. rule eff. 05/11/2020; expired 09/08/2020.
Rule 1.26 emer. rule eff. 08/30/2020.
Rule 1.27 emer. rule eff. 09/09/2020.
Rules 1.1-1.6, 1.10-1.17, 1.19-1.24 emer. rules eff. 10/28/2020.
Rule 1.26 emer. rule eff. 12/07/2020.
Rule 1.27 emer. rule eff. 12/28/2020.
Rules 1.1-1.6, 1.9 F.4, 1.10-1.17, 1.19-1.24, 1.28, Appendix A eff. 12/30/2020.
Rule 1.28 emer. rule eff. 01/11/2021.
Rule 1.26 emer. rule eff. 04/06/2021.
Rule 1.27 emer. rule eff. 04/27/2021.
Rule 1.28 emer. rule eff. 05/11/2021.
Rules 1.29, 1.30, Appendix A eff. 06/14/2021.
Rules 1.26, 1.27, 1.28 emer. rules eff. 07/12/2021.
Rule 1.31 emer. rule eff. 11/01/2021.
Rules 1.26, 1.27, 1.28 emer. rules eff. 11/02/2021.
Rules 1.1 F, G, 1.2 F, G, H, 1.5 A, 1.10 E, 1.13 H.7, 1.14 D, 1.15 B, F, G, 1.16 B, 1.31 eff. 12/15/2021.
Rules 1.26-1.28 emer. rules eff. 03/02/2022.
Rules 1.26-1.28 emer. rules eff. 05/24/2022; expired 09/21/2022.
Rules 1.26-1.28 emer. rules eff. 09/22/2022.
Rules 1.33, 1.34 emer. rules eff. 10/19/2022.
Rules 1.26-1.28 emer. rules eff. 11/11/2022.
Rules 1.26-1.28 emer. rules eff. 12/10/2022.
Rules 1.1 A,F, 1.10 A,E, 1.14 A,D, 1.31-1.34, Appendix B eff. 12/15/2022.
Rules 1.26-1.28 emer. rules eff. 01/09/2023; expired 05/09/2023.

Annotations

Rule 1.28 E.4 (adopted 10/28/2020) was not extended by Senate Bill 21-152 and therefore expired 05/15/2021.

Rules 1.34 B. and 1.34 C. (adopted 10/19/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

Notice of Proposed Rulemaking

Tracking number

2023-00801

Department

700 - Department of Regulatory Agencies

Agency

719 - Division of Professions and Occupations - State Board of Pharmacy

CCR number

3 CCR 719-1

Rule title

STATE BOARD OF PHARMACY RULES AND REGULATIONS

Rulemaking Hearing

Date

01/18/2024

Time

09:00 AM

Location

Webinar only - See below

Subjects and issues involved

The Colorado State Board of Pharmacy will hold a Permanent Rulemaking Hearing on January 18, 2024, at 9:00 A.M. to receive testimony before the Board determines whether to adopt proposed revisions and additions to Rule 14 - OTHER OUTLETS. The purpose of the proposed revisions and additions are "to clarify organizations utilizing an Other Outlet license type on record keeping requirements with mobile drug delivery and administration."

Statutory authority

12-20-204, 12-280-107(1), and 24-4-103 C.R.S.

Contact information

Name

Maria Hernandez

Title

Regulatory Coordinator

Telephone

303-869-3409

Email

dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

State Board of Pharmacy

STATE BOARD OF PHARMACY RULES AND REGULATIONS

3 CCR 719-1

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

14.00.00 OTHER OUTLETS.

…

14.03.00 Dispensing records.

a. At minimum, dispensing records must include the following information for every transaction:

(1) Unique serial number;

(2) Patient name;

(3) Prescriber;

(4) Date dispensed;

(5) Name and strength of drug dispensed;

(6) Quantity dispensed;

(7) Whether the transaction is a new or refill transaction;

(8) If refill transaction, the date of the initial order;

(9) Number of refills authorized;

(10) Number of refills dispensed to date;

(11) Identification of individual responsible for dispensing;

(12) If a controlled substance, the Drug Enforcement Administration registration number of the prescriber;

(13) In the case of other outlet off-site dispensing, dispensing records shall distinguish between on-site and off-site transactions.

Records must be current and show all dispensing transactions, new and refill.

14.03.10 Computer use for dispensing transactions. An other outlet may utilize a computer (automated data processing system) for storage and retrieval of information regarding dispensing transactions. The following requirements shall be met:

a. All new and refill transactions shall be entered into the system at the time of the transaction, except as provided in Rule 14.03.10 i.

b. Every twenty-four hours, except as provided in Rule 14.03.20, the system must produce a hard-copy document which, for the purposes of these Rules, shall be known as the "daily printout". It shall consist of a single, uniform, complete document, except as otherwise permitted by this Rule. The daily printout shall list, separately, each prescription order transaction for the previous twenty-four hours and shall contain all information required by this Rule. Daily printouts shall be retained in a chronological manner. If the printouts are bound, the sheets shall be separated into individual pages which are then placed in the same order as printed and bound uniformly. If the pages are bound in any other manner so that they are not uniform in placement or appearance, they shall be deemed not readily retrievable and available.

c. The daily printout shall contain all of the following information for each dispensing transaction and shall differentiate between new and refill transactions. As an alternative, new and refill transactions may be separated into two separate uniform and complete documents which contain the following:

(1) The serial number;

(2) The name of the patient;

(3) The name of the practitioner;

(4) For each controlled substance dispensed, the practitioner's Drug Enforcement Administration registration number;

(5) The date of issue by the practitioner. If the date is omitted by the practitioner, the date dispensed shall be presumed to be the date of issue;

(6) The total number of refills authorized;

(7) The date dispensed;

(8) The initials, name, or secure electronic identifier of the individual making the final evaluation;

(9) The name and strength of the drug dispensed;

(10) The quantity of the drug dispensed;

(11) In the case of a refill, the total number of refills dispensed to date.

(12) In the case of other outlet off-site dispensing, dispensing records shall distinguish between on-site and off-site transactions.

d. Records of dispensing transactions involving controlled substances shall be identifiable from those involving non-controlled substances. Alternatively, a separate complete printout listing only controlled substance transactions may be produced.

e. The daily printout shall be available for inspection by the Board within seventy-two hours from the most recent date recorded on the printout. In the case of other outlet off-site dispensing, dispensing records shall distinguish between on-site and off-site transactions.

f. Documentation of the fact that the refill information entered into the automated data processing system each time a person refills an original prescription order for a schedule III, IV, or V controlled substance is correct must be provided by the individual who makes the final evaluation. This documentation may be retained in the following manner:

(1) If such a system provides a hard-copy printout of each day's controlled substance prescription order refill data, the controlled substance refill information shall be verified, dated, and signed by the person making the final evaluation. This individual shall verify that the date indicated is correct and then sign this document in the same manner as he/she should sign a check or legal document. This document shall be maintained in a separate file at the other outlet for a period of two years from the dispensing date. The printout of the day's controlled substance dispensing transaction must be generated by the other outlet within seventy-two hours of the date on which the refill was dispensed. It must be verified and signed by each person who is involved in dispensing controlled substance refills.

OR

(2) The other outlet shall maintain a bound log book, or separate file, in which each person involved in dispensing controlled substance refills shall sign attesting to the fact that the refill information entered into the computer that day has been reviewed by him/her and is correct as shown. Such a book or file must be maintained at the other outlet for a period of two years after the date of dispensing the appropriately authorized refill.

g. The daily printout shall contain all information as required by this Rule except that the identity of the person who makes the final evaluation may appear either on the daily printout or on another separate, uniformly maintained and readily retrievable record. The consultant pharmacist shall determine which of the two methods for identifying the responsible person is more appropriate for the outlet, and only that method for recording such information shall be used.

h. Because of the potential for a system malfunction or failure, the other outlet must have a manual procedure for recording all dispensing transactions during the system failure or malfunction. All recoverable transaction data and all manually recorded transaction data shall be entered or restored into the system within a reasonable period of time not to exceed seven days following the restoration of operation of the system.

i. Any automated data processing system used by an outlet shall maintain the confidentiality of records in accordance with applicable laws, rules and regulations.

…

14.03.30 Off-Site Administration and Dispensing of Medication

a. An other outlet may allow a designated individual to remove medications for the purpose of dispensing and administering at an Off-Site location, provided the following requirements are met:

(1) The other outlet maintains records which detail the removal of the medications with at least the following information:

(a) Name, strength, dosage form, and NDC number of the medication removed;

(b) Quantity removed;

(c) Date removed;

(d) Name and title of designated individual removing the medication.

(2) The medications are property stored at compendial temperatures during transport and storage at the off-site location.

(3) The medications shall be secured during transport and stored at the off-site location so as to allow only persons affiliated with the other outlet to have access to them.

(4) The remaining medications shall be returned to the other outlet the day they were removed.

(5) The other outlet shall maintain records detailing the medications returned with at least the following information:

(a) Name, strength, dosage form, and NDC number of the medications returned;

(b) Quantity returned;

(c) Date returned; and

(d) Name and title of designated individual returning the medication.

(6) All requirements for labeling (3.00.30) and dispensing logs (14.03.00) are satisfied and shall reflect the registered on-site location address in all transactions.

(7) All required records shall be maintained in a manner that is uniformly maintained, readily retrievable, and available for inspection for a period of two years from the date of removal of medications for off-site administration and dispensing.

…

Editor's Notes

History

Rules 2.01.10; 2.01.30; 3.00.50; 3.00.70, 6.00.20; 6.00.30; 6.00.40; 8.00.10; 11.04.20; 14.03.10 eff. 07/30/2007.

Rules 8.00.10; 11.04.10; 20.00.00 eff. 09/30/2007.

Rule 4.00.00 eff. 11/30/2007.

Rules 3.01.20, 10.00.00 eff. 03/01/2008.

Rules 5.01.31; 15.01.11; 15.01.12; 15.09.11; 15.09.14; 22.00.00 eff. 05/30/2008.

Rules 4.02.00 (c), 21.00.00, 23.00.00 eff. 06/30/2008.

Rules 1.00.00, 2.00.00, 3.00.00, 5.00.00, 7.00.00, 11.00.00, 12.00.00, 14.00.00 eff. 11/30/2008.

Rule 15.09.11 eff. 01/31/2009.

Rules 6.00.30, 11.06.00, 22.00.00 eff. 03/02/2009.

Rule 9.00.00 eff. 04/30/2009.

Rules 5.00.55, 5.01.31(a), 6.00.20(f), 14.00.40, 15.01.17, 15.01.18, 15.08.19(f), 15.09.11(d), 15. 09.15, 15.09.19, 15.09.20(g-h), 15.09.23, 15.09.24, 15.10.10, 16.00.20(d), 19.01.10(b), 19.01.30(a) eff. 12/30/2009.

Rules 4.00, 18.00 eff. 03/17/2010.

Rules 3.00.80 – 3.00.90; 5.00.55; 15.01.12; 19.00.00 – 19.01.50. Rule 22.00.00 repealed eff. 07/15/2010.

Rules 1.00.21, 5.01.31(e), 5.01.50 eff. 08/30/2010.

Rules 5.00.55, 21.11.10 (a), 21.21.70 (a) eff. 11/14/2010.

Rules 1.00.18, 2.01.50 – 2.01.53, 3.00.50 – 3.00.51, 5.00.50, 5.00.60, 5.01.31.a, 11.04.10, 15.01.11, 15.09.11.e eff. 06/14/2011.

Rules 3.01.24, 4.00.00, 11.04.20, 11.04.30, 21.00.00 - 21.11.20, 23.00.00 eff. 04/14/2012.

Rule 14.00.10 eff. 05/15/2012.

Entire rule eff. 01/01/2013. Rule 17.00.00 repealed eff. 01/01/2013.

Rules 3.00.21 – 3.00.22, 3.00.55, 3.00.90.e.(4), 3.01.20.c, 3.01.30, 3.01.32, 3.01.34, 4.00.10.f, 4.00.20, 5.01.31.a.(1)(C), 15.10.14.a, 23.00.90 eff. 09/14/2013.

Rules 2.01.10, 3.00.25, 3.00.91, 5.00.15, 6.00.30, 10.00.00, 11.03.00, 11.07.10, 14.00.05.k-l, 14.00.80.e.(2), 14.00.80.j, 16.00.00, 18.00.00, 20.00.00, 21.00.20, 21.10.80, 21.11.00.a.(12), 21.11.10.c, 21.20.20, 21.20.30.b(14), 21.21.40.c, 21.21.70.c, 21.22.00.b(1), 23.00.30, 23.00.50, 23.00.65, 23.00.70, eff. 10/15/2014.

Rules 3.00.22, 3.00.81.l-o, 3.00.82-3.00.84, 3.00.85.a(3), 3.00.86, 3.00.88.a(2), 3.00.88.b(10), 4.06.00, 6.00.10-6.00.20, 6.00.40.a, 6.00.50, 6.00.60.a, 6.00.60.b.10, 6.00.70.a, 6.00.90.b, 6.01.10.a, 19.01.40.c, 21.00.10, 21.00.20.b, 21.10.60.b, 21.10.80.b(4), 21.11.10.a(5), 21.11.10.c(9), 21.20.10.d, 21.20.20.b(2)(a), 21.20.25.b, 21.20.70.f, 21.20.90.b-c, 21.21.10.b, 21.21.70.a(6), 21.21.70.c(10), 23.00.40.y-z, 23.00.70.h-j eff. 09/14/2015.

Rules 3.00.21, 3.00.27, 19.01.10(1), 21.00.20, 21.11.20.d, 21.20.16, 21.20.20.b.(2), 21.20.60.b, 21.20.60.e, 21.21.90.d eff. 03/16/2016.

Rules 3.00.20, 3.00.22 e, 3.00.81 g, 3.00.84, 3.01.10 d, 4.00.10, 4.00.25, 4.05.00, 5.00.15 d, 5.01.31, 6.00.20 e, 7.00.10, 8.00.10, 14.00.80 i-k, 19.01.10 b.(2), 20.00.80 a.1, 21.00.20, 21.00.30, 21.20.20 b, 27.00.00, 28.00.00 eff. 11/14/2016. Rule 10.00.51 repealed eff. 11/14/2016.

Rule 17 eff. 03/17/2017. Rule 18 repealed eff. 03/17/2017.

Rules 3.01.10 d, 7.00.30 b.4, 21.00.20, 21.00.30, 23.00.10, 23.00.70 eff. 11/14/2017. Rules 1.00.15, 5.00.55 a.(6) repealed eff. 11/14/2017.

Rules 3.05.00, 5.01.31 m, 5.01.31 r, 5.01.40 a, 5.01.50 a-f, 11.03.05, 11.04.10, 11.06.10 j, 14.02.30 d, 20.00.90 c, 20.01.00 a.2.iv, 21.00.20 d.ii, 21.20.70 g, 25.00.12 d-e, 25.00.14 c-d, 25.00.16 e eff. 09/17/2018.

Rules 1.00.24, 2.01.50, 2.01.52, 2.01.53, 2.01.56, 2.01.80, 3.00.23, 3.00.30, 3.05.10-3.05.30, 3.05.80, 7.00.30 c, 11.03.00 a, 11.07.10 a, 14.00.05 m, 14.00.40 f.1, 14.00.80 e, 15.01.11 a.(8)(i), 15.01.11 a.(9), 15.09.14 a, 19.01.10 b.-c, 23.00.10, 23.00.70, 29.00.00 eff. 11/30/2019.

Rule 30.00.00 emer. rule eff. 05/01/2020; expired 08/28/2020.

Rules 17.00.10, 17.00.30 a.7, 17.00.50 b.2, 17.00.70, 17.00.80, 17.01.00, 17.02.00 a, 17.03.00 b, 17.04.00 eff. 05/15/2020. Rule 6.00.00 repealed eff. 05/15/2020.

Rule 30.00.00 eff. 08/30/2020. Rule 3.04.00 repealed eff. 08/30/2020.

Rules 2.01.20, 3.00.81 a, 3.01.22 b, 5.00.40, 5.00.50 a, 7.00.30 b, 10.00.60, 11.08.00, 11.08.50, 14.00.05 b, 14.00.40 b-c, 14.05.11, 15.05.20, 15.01.11 b-d, 15.01.14 a-b, 15.01.17, 17.00.50 c, 24.00.50, Appendix C eff. 11/14/2020.

Rule 19.00.00 emer rule eff. 11/19/2020.

Rule 1.00.25, Appendix D eff. 12/30/2020.

Rules 5.01.31 j-k, 17.00.10 d, 19.01.10, 19.01.20, 19.01.30 a, 19.01.40 a.(5)-(9), 19.01.50 a.(3) eff. 03/17/2021.

Rule 1.00.25 E-F eff. 05/15/2021.

Rules 1.00.18, 1.00.24, 2.01.10 d-f, 2.01.20, 3.00.21, 3.00.22, 3.03.10 a(2), 3.03.10 a(7), 3.03.10 b(2), 5.00.01, 5.00.10, 5.00.17, 5.00.19, 5.00.40, 5.00.50, 5.00.55 b, 5.00.60, 7.00.30, 9.00.10 e, 14.00.05, 14.00.80 e(1), 15.01.00 a, 15.02.10, 15.09.11, 15.09.12 c, 15.09.14 a, 15.10.10 l, 17.00.10, 21.00.10, 21.00.20, 21.11.10 c, 21.21.70 a, 23.00.10 n, 23.00.30, 23.00.40, 23.00.50, 23.00.90 a.2, 23.00.90 c, 29.00.50, Appendix C eff. 11/30/2021.

Rules 32.00.00, 33.00.00 emer. rules eff. 09/29/2022.

Rules 3.00.22, 4.00.30 e, 4.00.40 e.-f, 5.00.19 a, 7.00.10 a, 14.00.05 l.-o, 14.00.40 f.(1), 14.00.80 e, 16.00.10, 16.00.20 d.(2), 16.00.80, 16.02.00, 16.02.01, 16.02.03, 17.00.70, 17.00.80, 17.01.00 a, 25.00.10, 25.00.12 a, 25.00.18, 25.00.24 a, 31.00.00, 33.00.00, 34.00.00, Appendices A, C, E, F eff. 11/30/2022.

Rules 5.00.01 g, 5.00.21 emer. rules eff. 07/20/2023.

Rules 5.00.01 g, 5.00.21 eff. 09/14/2023.

Annotations

Rules 33.00.00 D. and 33.00.00 E. (adopted 09/29/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

Notice of Proposed Rulemaking

Tracking number

2023-00789

Department

700 - Department of Regulatory Agencies

Agency

723 - Public Utilities Commission

CCR number

4 CCR 723-2

Rule title

RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES

Rulemaking Hearing

Date

01/29/2024

Time

11:30 AM

Location

By video conference using Zoom at a link in the calendar of events on the Commissions website: https://puc.colorado.gov/

Subjects and issues involved

The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Telecommunications Services and Providers of Telecommunications Services contained in 4 Code of Colorado Regulations (CCR) 723-2-2131, 2134, 2136, 2143 (collectively, the Basic Emergency Service Rules) and 2335 (Quality of Service Rule). The changes proposed are intended to (1) clarify the Commissions intent regarding the definition of basic emergency service (BES) outage and the related reporting requirements for BES outages, (2) establish a beginning date for the requirement that basic emergency service providers (BESPs) update basic information related to their BESP certifications every two years, (3) provide direction to BESPs regarding the conduct of repairs or maintenance in order minimize disruption to 9-1-1 service, and (4) update terminology and internal references.

Statutory authority

The statutory authority for the rules proposed here is found at §§ 24-4-101 et seq.; 40-2-108; 40-3-101, -102, -103, -107, -110; 40-4-101; 40-15-101, -201, -203.5, and -208, C.R.S.

Contact information

Name

Becky Quintana

Title

Deputy Director Commission Policy and Research Support

Telephone

303-894-2881

Email

rebecca.quintana@state.co.us

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-2

PART 2

RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES

2131. Definitions.

The following definitions apply only in the context of rules 2130 through 2159:

(a) "9-1-1" means a three-digit abbreviated dialing code used to report an emergency situation requiring a response by a public agency such as a fire department or police department.

(b) "9-1-1 access connection" means any communications service including wireline, wireless cellular, interconnected voice-over-internet-protocol, or satellite in which connections are enabled, configured, or capable of making 9-1-1 calls. The term does not include facilities-based broadband services. The number of 9-1-1 access connections is determined by the configured capacity for simultaneous outbound calling.

(c) "9-1-1 Advisory Task Force" means the representative group established in accordance with rule 2145, which provides oversight of the statewide implementation and provision of basic emergency service, and periodically reports to the Commission on matters related to 9-1-1 service delivery in the state of Colorado.

(d) "9-1-1 call" means a request for emergency assistance from the public by dialing 9-1-1 or addressing the ESInet regardless of the technology used, and may include voice, text, images, and video, whether originated by wireline, wireless, satellite, or other means.

(e) "9-1-1 service" means the service by which a 9-1-1 call is routed and transported from the end user to the governing body or PSAP serving the caller's location. 9-1-1 service also includes location information routed to the PSAP.

(f) "9-1-1 surcharge" or "state 9-1-1 surcharge" means the surcharge established pursuant to § 29-11-102.3, C.R.S.

(g) "Automatic Location Identification" (ALI) means the automatic provision to a PSAP for display, on equipment at the PSAP, of the telephone number and location of the caller. ALI data includes non-listed and non-published numbers and addresses, and other information about the caller's location.

(h) "Automatic Number Identification" (ANI) means the automatic provision to a PSAP for display of the caller's telephone number at the PSAP

(i) "Basic emergency service" (BES) means the aggregation and transportation of a 9-1-1 call directly to an agreed-upon demarcation point ~~with a governing body or~~for delivery to the primary designated PSAP for that call, regardless of the technology used to provide the service. The aggregation of calls means the collection of 9-1-1 calls from one or more OSPs or IASPs for the purpose of selectively routing and transporting 9-1-1 calls directly to a demarcation point with a governing body or PSAP. The offering or providing of location information or selective routing directly to a governing body or PSAP is also a basic emergency service. Basic emergency service does not include:

(I) the portion of a 9-1-1 call provided by an OSP;

(II) the portion of a 9-1-1 call or services provided by an IASP;

(III) the portion of a 9-1-1 call from the OSP or an IASP to a demarcation point with the BESP;

(IV) the portion of a 9-1-1 call after the demarcation point between the BESP and the governing body or PSAP; or

(V) the delivery of text messages to a governing body or PSAP via networks or connections separate from the basic emergency service network.

(j) "Basic emergency service facilities" or "BES facilities" means the lines, wires, cables, conduit, ducts, poles, cross-arms, equipment, supporting structures, and other infrastructure used by the BESP to provide basic emergency service. "Facilities" has the same meaning, unless the context requires otherwise.

(k) "Basic emergency service network" or "BES network" means the portion of the 9-1-1 call path that begins at the demarcation point between an OSP or IASP and a BESP and ends at the demarcation point between a BESP and a governing body or PSAP to provide basic emergency service.

(l) "Basic emergency service outage" or "BES outage" means a failure of basic emergency service that prevents or would prevent 9-1-1 calls, ANI, or location information from being delivered from the demarcation point between the OSP or IASP and the BESP to the demarcation point between the BESP and the primary designated ~~governing body or~~ PSAP~~.~~ resulting in an inability to deliver 9-1-1 calls or location information to the demarcation point. A BES outage includes:

(I) any event or incident on the BESP's side of the demarcation point that results in or requires the BESP to reroute 9-1-1 calls to the demarcation point for an alternate PSAP rather than the primary designated PSAP; and

(II) any situation in which a PSAP is unable to receive 9-1-1 calls or location information as the result of an event or incident on the BESP's side of the demarcation point, even if the facilities involved in the event or incident also provide OSP connectivity.

(m) "Basic Emergency Service Provider" (BESP) means any person certificated by the Commission to provide basic emergency service.

(n) “Concurrent session” means a channel for an inbound simultaneous 9-1-1 call.

(o) “Demarcation point” means a physical point of interconnection where the responsibility for a portion of 9-1-1 service changes from one party to another. It includes the point of interconnection between the BESP and the OSP, IASP, or other BESP for the purpose of selectively routing and transporting 9-1-1 calls directly to ~~a demarcation point with~~ a governing body or PSAP~~., and i~~it includes the point of interconnection ~~mutually agreed upon in writing by the BESP and each governing body or PSAP with primary responsibility for dispatching first responders to the callers' locations.~~between the BESP and the primary designated PSAP. The demarcation point between the BESP and the primary designated PSAP may be at a locally provided network or other location physically separated from the PSAP, as agreed upon in writing between the BESP and the governing body.

(p) "Emergency notification service" (ENS) means a public alerting service that, upon activation by a public agency, rapidly distributes notifications within a specified geographic area of hazardous conditions or emergent events that threaten the health or lives of people or threatens damage or destruction of property, including, without limitation, floods, fires, and hazardous materials incidents.

(q) "Emergency telephone charge" means a charge established by a governing body pursuant to § 29-11-102(2)(a), C.R.S., to pay for the expenses authorized in § 29-11-104, C.R.S.

(r) "Geographic area" means the area such as a city, municipality, county, multiple counties or other areas defined by a governing body or other governmental entity for the purpose of providing public agency response to 9-1-1 calls.

(s) "Governing body" means the organization responsible for establishing, collecting, and disbursing the emergency telephone charge in a specific geographic area, pursuant to §§ 29-11-102, 103, and 104, C.R.S.

(t) “Improvement amount” means the amount approved by the Commission as described in subparagraph 2137(e)(II).

(u) “Improvement plan” means the plan proposed by a BESP or approved by the Commission as described in paragraph 2143(b).

(v) “Intermediary aggregation service provider” (IASP) means a person that aggregates and transports 9-1-1 calls for one or more OSPs for delivery to a demarcation point with a BESP.

(w) “Location information” means ALI or its functional equivalent associated with a 9-1-1 call and provided by a BESP pursuant to its BES tariff.

(x) "Multi-line telephone system" (MLTS) means a system comprised of common control units, telephones, and control hardware and software providing local telephone service to multiple customers in businesses, apartments, townhouses, condominiums, schools, dormitories, hotels,

motels, resorts, extended care facilities, or similar entities, facilities, or structures. Multi-line telephone system includes:

(I) network and premises-based systems such as Centrex, PBX, and hybrid-key telephone systems; and

(II) systems owned or leased by governmental agencies, nonprofit entities, and for-profit businesses.

(y) "Multiple-line telephone system operator" means the person that operates an MLTS from which an end user may place a 9-1-1 call through the public switched network.

(z) "Network Operations Center" (NOC) or "Basic Emergency Service Network Operations Center" means a 24x7, 365 days a year single point of contact for Basic Emergency Service (BES). The NOC is responsible for monitoring the BES network, notifying PSAPs of BES outages, initiating repairs, troubleshooting, and resolving BES network issues.

(aa) "Originating service provider" (OSP) means a local exchange carrier, wireless carrier, Voice-over-Internet-Protocol service provider, or other provider of functionally equivalent services supplying the ability to place 9-1-1 calls.

(bb) "Primary designated PSAP" means the PSAP designated to the BESP as the primary or first PSAP meant to receive a call for a specific geographic area. This designation is determined by the governing body with jurisdictional authority for the geographic area from which the call originates.

(ccbb) "Public Safety Answering Point" (PSAP) means a facility equipped and staffed to receive and process 9-1-1 calls from a BESP.

(ddcc) "Selective routing" means the routing of a 9-1-1 call to the demarcation point with a governing body or PSAP based upon the location information or other factors as agreed upon by the governing body or PSAP.

* * * *

[indicates omission of unaffected rules]

2134. Process for Certification of Basic Emergency Service Providers (BESPs).

* * * *

[indicates omission of unaffected rules]

(e) ~~Two years from the grant of the application~~By March 30, 2025, and each two years thereafter, each BESP actively providing BES shall file with the Commission updates regarding any changes to the following required information in paragraph (c): items (I)-(IV), (XII)-(XVIII), (XX)-(XXV), and (XXIX)(A)-(C). Additionally, the BESP shall include with this filing an attestation that the information provided is true, accurate, and correct, and that the BESP remains financially and administratively sound and capable of providing the BES offered in its current tariff(s).

* * * *

[indicates omission of unaffected rules]

2136. Obligations of Basic Emergency Service Providers.

(a) A BESP certificated by the Commission shall interconnect with all OSPs and IASPs who have customers in areas served by the BESP. BESPs shall interconnect with all other BESPs for the purpose of transferring 9-1-1 calls to PSAPs served by the other BESPs.

(b) The BESP shall provide geographically diverse demarcation points for aggregating 9-1-1 calls and location information from OSPs and IASPs. At the request of an OSP or IASP, a BESP shall interconnect with the request for the purpose of aggregating and transporting 9-1-1 calls and location information from the requestor to the demarcation point with the governing body or PSAP. Interconnection shall be accomplished in a timely manner, generally not more than 30 days from the time the BESP receives a written order. Interconnection facilities shall generally be engineered as follows:

(I) dedicated facilities for connecting OSPs and IASPs to a BESP shall be based on the requirements established by the BESP to serve the customers within that local exchange; or

(II) if shared or common facility groups are used to transport calls from an OSP or IASP to a BESP, they shall be sized to carry the additional call volume requirements. Additionally, common or shared groups shall be arranged to provide 9-1-1 calls on a priority basis where economically and technically feasible.

(c) A BESP shall develop and file with the Commission tariffs that comply with the requirements set forth in rule 2137.

(d) A BESP shall render to each governing body a single monthly bill for its tariffed services. The monthly bill shall be sufficiently detailed to allow the governing body to determine that it is being billed properly based on the billing increments as approved by the Commission.

(e) BESPs shall ensure, to the extent possible and in the most efficient manner, that basic emergency service is available for transmitting 9-1-1 calls from deaf, hard of hearing, and persons with speech impairments to the appropriate PSAP.

(f) A BESP shall ensure that all BES facilities, and interconnections between it and the OSPs and IASPs are engineered, installed, maintained, and monitored in order to provide a minimum of two circuits and a minimum P.01 grade of service (one percent or less blocking during the busy hour), or such other minimum grade of service requirements approved by the Commission.

(g) Where a BESP obtains BES facilities from a basic local exchange carrier, the rates for such facilities shall be reflected in a tariff or agreement filed for approval with the Commission. Such tariffs or agreements shall ensure that such facilities are engineered, installed, maintained, and monitored to provide a minimum of two circuits and a grade of service that has one percent (P.01) or less blocking. The basic local exchange carrier providing such facilities shall not be

considered a BESP. The provisions of this rule shall not apply to routing arrangements implemented pursuant to paragraph 2143(j)(II).

(h) To expedite the restoration of service following a 9-1-1 outage, each BESP shall designate a telephone number for governing bodies, PSAPs, IASPs, and OSPs to report trouble. Such telephone number shall be staffed seven days a week, 24 hours a day, by personnel capable of processing calls to initiate immediate corrective action.

(i) A BESP shall keep on file with the Commission its contingency plan as described in paragraph 2143(e).

(j) BESPs shall identify service providers supplying service within a governing body or PSAP's service area, or statewide, to the extent that the BESP possesses such information, in response to a request from a governing body, PSAP, or the Commission.

(k) A BESP shall report to the Commission a list of every PSAP serviced by the BESP with the number of concurrent sessions provided to each PSAP. This report shall be updated and filed annually with the Commission by June 1 of each year.

(l) If the BESP is aware of repairs or maintenance being conducted or to be conducted that have the potential to impact BES to a primary designated PSAP, the BESP shall notify that PSAP of the potential of a BES outage at least 24 hours prior to work commencing or as soon as possible. This notification shall be provided by voice call to the PSAP, if possible, and to the contact maintained for the PSAP as described in paragraph 2143(c). When scheduling routine maintenance or repairs, the BESP should schedule such repairs at a time likely to cause the least impact to the affected PSAP(s). Wherever practicable, maintenance of the BES network shall be performed with no scheduled downtime. The BESP shall employ best efforts to ensure that planned events for routine maintenance are scheduled and communicated to avoid impacts to BES customers' 9-1-1 operations. Conduct of emergency or unscheduled repairs in order to restore BES should not be delayed in order to make PSAP notifications.

* * * *

[indicates omission of unaffected rules]

2143. Basic Emergency Service Reliability and Outage Response.

* * * *

[indicates omission of unaffected rules]

(c) Each BESP shall maintain contact information for each PSAP ~~as specified by the governing body or PSAP~~ served by the BESP for notification of actual or potential BES outages. No less than annually, the BESP shall contact each governing body or PSAP that is served by the BESP to verify the notification information on file.

* * * *

[indicates omission of unaffected rules]

(j) In the event of a confirmed or potential BES outage, the following shall occur.

(I) The BESP shall notify each affected governing body or PSAP via the contacts previously provided in accordance with paragraph (c) of this rule. Such notifications shall be made as soon as is practical, and shall include a trouble ticket number, the nature and extent of the BES outage, if known, and the actions being taken to correct the outage. If applicable, the notice shall include interim measures being taken to route 9-1-1 calls to alternate PSAPs or other locations. If known, the notification shall also include an estimated time of repair.

(II) If the BES outage exceeds or is anticipated to exceed 15 minutes from the time a BESP becomes aware of the outage, the BESP shall implement the appropriate contingency plan as established in paragraph (e) or provide temporary solutions so that 9-1-1 calls can be answered until BES is restored. The BESP shall coordinate any alternate solutions with the contact(s) provided in accordance with paragraph (c) for the affected governing body or PSAP. All 9-1-1 calls shall be delivered to the primary designated PSAP, if possible, or to an alternate PSAP if the delivery to the primary designated PSAP is not possible.

(III) If a ~~disruption of~~ BES outage exceeds 30 minutes in duration, the responsible BESP shall inform the Commission within two hours of the time that the BESP becomes aware of the outage. Such notification shall be made ~~in a manner prescribed by the Commission~~through an outage reporting form, available on the Commission's website. The BESP shall report BES outages as required by this rule even if 9-1-1 calls have been rerouted to an alternate PSAP or other destination, with or without location information.

~~(IV) , outlining the nature and extent of the outage and actions taken to restore service and any interim measures taken to mitigate the outage prior to resolution.~~ The BESP shall notify the Commission through the outage reporting form of restoration of ~~service~~ BES by the beginning of the next business day following the restoration of service.

~~(V) This notification shall be followed within 30 days of such outage by a~~For all BES outages, the BESP shall submit a final report to the Commission through the outage reporting form within 30 days of the restoration of service. The report shall ~~follow Commission reporting format and guidelines and shall~~ include a statement of whether call back numbers for 9-1-1 calls, which could not be connected due to the BES outage, were provided to the PSAP pursuant to subparagraph ~~2143~~(j)(VI) of this rule. ~~Commission staff may request an update regarding an ongoing outage at any time.~~

~~(IV) All 9-1-1 calls received by the BESP shall be routed to the PSAP with primary responsibility for dispatching first responders to the caller's location, or in accordance with the alternate solutions described in paragraph (j)(II) of this rule, or, if unavailable, to another PSAP if possible.~~

(VI) Following the restoration of BES, the BESP shall notify each affected governing body or PSAP whether call back phone numbers are available for calls that were made to 9-1-1 but could not be delivered due to the outage. If available, these call back numbers shall be provided to each governing body or PSAP within two hours of the restoration of service. When possible, this information should also include location information.

(VII) In the event of a BES outage of more than four hours duration, or 12 hours in duration if the outage is due to a fiber cut, the BESP shall provide a credit equal to the ratio of hours of the duration of the outage in hours to the total number of hours in the billing cycle. The credit shall be provided within no more than two billing cycles~~.~~ to the governing body or PSAP that normally receives the bill. If, as the result of a formal complaint proceeding or other proceeding, the Commission finds that a BESP has failed to provide a credit required under this paragraph, the Commission may order the amount of the credit to be doubled. Additionally, civil penalties may be assessed as described in rules 2009 through 2011.

* * * *

[indicates omission of unaffected rules]

2335. The Provision of Service During Maintenance or Emergencies.

The following paragraphs describe minimum standards for maintaining service.

* * * *

[indicates omission of unaffected rules]

(d) Service interruptions for an extended time due to maintenance requirements shall be performed at a time that causes minimal inconvenience to impacted customers. Each provider of services identified in rule 2330 shall take reasonable steps to notify the customer in advance of extended maintenance requirements. Such providers shall also make emergency service available when the provider knows that the service interruption affects 1,000 or more access lines and when the provider knows, based upon the prior experience of the provider, that the interruption may last more than four hours during the hours of 8 a.m. to 10 p.m. If ~~the~~ a basic emergency service provider ~~cannot provide~~experiences a basic emergency service outage as defined in paragraph 2131(l), it shall file a report of the occurrence as required by subparagraph 2143(~~jh~~)(III).

Decision No. C23-0800

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23R-0577T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO 4 CODE OF COLORADO REGULATIONS 723-2 MODIFYING THE COMMISSION RULES REGARDING BASIC EMERGENCY SERVICE OUTAGE PREVENTION, RESPONSE, AND REPORTING.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: December 5, 2023
Adopted Date: November 29, 2023

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Telecommunications Services and Providers of Telecommunications Services contained in 4 *Code of Colorado Regulations* (CCR) 723-2-2131, 2134, 2136, 2143 (collectively, the Basic Emergency Service Rules) and 2335 (Quality of Service Rule).

2. The changes proposed are intended to (1) clarify the Commission's intent regarding the definition of "basic emergency service (BES) outage" and the related reporting requirements for BES outages, (2) establish a beginning date for the requirement that basic emergency service providers (BESPs) update basic information related to their BESP certifications every two years, (3) provide direction to BESPs regarding the conduct of repairs or maintenance in order minimize disruption to 9-1-1 service, and (4) update terminology and internal references.

3. This rulemaking follows a recent, much more extensive 9-1-1 rulemaking, completed in Proceeding No. 22R-0122T. This rulemaking is primarily intended as a clarification to the rules adopted in that Proceeding by Decision No. R22-0811. The rulemaking in Proceeding No 22R-0122T covered numerous rule changes regarding Basic Emergency Service network reliability and prescribed a tariff-based mechanism for funding Basic Emergency Service network improvements. As part of that rulemaking, the Commission proposed and eventually adopted rules pertaining to what is considered a BES outage.[1]

4. Pre-rulemaking stakeholder engagement included circulating advanced drafts of these proposed rules to the members of the Commission's 9-1-1 Advisory Task Force, as well as a webinar and presentation on October 3, 2023, which described the proposed changes and solicited feedback from stakeholders. The proposed rules attached to this NOPR reflect several modifications made based on the initial input received.

5. The proposed rules are attached to this Decision as Attachment A, the proposed rules in legislative format, and Attachment B, the proposed rules in "clean" format.

B. Background

6. With the implementation of the rules adopted by the Commission in Decision No. R22-0811, Commission staff has begun conducting investigations into basic emergency service outages that meet criteria established by the Commission's 9-1-1 Advisory Task Force, as described in 4 CCR 723-2-2143(k). Staff has been filing the final reports for these investigations in Proceeding No. 23M-0145T.

[1] See Decision No. C22-0174 issued in Proceeding No. 22R-0122T, para. 11-15.

7. Since the rules established by Proceeding No. 22R-0122T went into effect, it has come to the attention of Commission staff that Colorado's only actively serving BESP, Qwest Corporation dba CenturyLink QC (CenturyLink),[2] construes the Commission's definition of a "basic emergency service outage" and what outages qualify as BES outages under the Commission's Rules differently than intended. This construal extends into the application of other rules that rely on the definition of basic emergency service outages, such as outage reporting requirements and billing credit requirements.

8. On numerous occasions, CenturyLink has argued in outage investigation responses that outages in facilities that service customers other than Public Safety Answering Point (PSAPs) are originating service provider (OSP) outages, not BES outages, even if those outages also impact a PSAP and prevent the PSAP from being able to receive calls. CenturyLink has also argued in outage investigation responses that if the company reroutes 9-1-1 calls to another, alternate PSAP, then no outage has occurred, since the calls are still being answered, even if they are not being answered by the PSAP originally intended to receive the call. As the Commission explained in the NOPR opening Proceeding No. 22R-0122T and reiterates here, if a PSAP is unable to receive 9-1-1 calls or associated location information, then it is not receiving the basic emergency service it has purchased under the tariff.[3] Rerouting calls to an alternate PSAP is a desirable and critical mitigation strategy to lessen the impact of an outage on the public, but the implementation of

[2] CenturyLink also does business in Colorado as Lumen or Lumen Technologies.

[3] *See* Decision No. C22-0174 issued in Proceeding No. 22R-0122T, para. 13 ("The proposed definition of Basic Emergency Service Outage is intended to clarify what is or is not considered a Basic Emergency Service Outage for the purposes of Rule 2143. Through this proposed definition, we intend to make clear that: (1) Basic Emergency Service outages still occur if 9-1-1 calls cannot be delivered to their intended Public Safety Answering Point (PSAP) due to a failure in the Basic Emergency Service network, even if those calls have been successfully rerouted to another PSAP; (2) if 9-1-1 calls cannot be delivered, but location information, if available, cannot, then an outage has still occurred; and (3) outages that occur due to a failure in the Basic Emergency Service portion of the network is still an outage, even if that portion of the network also serves a function in the CenturyLink originating service network.)

alternate routing does not mean that the outage did not occur. Governing bodies and PSAPs purchase a service which includes routing of 9-1-1 calls that originate in their service areas to the appropriate PSAP, and when that isn't possible then the service is not, in fact, functioning as intended. Similarly, as the Commission made clear in its previous NOPR, a Basic Emergency Service outage still occurs if 9-1-1 calls cannot be delivered to their intended PSAP due to a failure in the Basic Emergency Service network, even if those calls have been successfully rerouted to another PSAP.[4]

9. The Commission opens this rulemaking and issues this NOPR out of an abundance of caution to ensure that the language of the Commission's Rules related to BES outages matches the Commission's stated understanding in Decision No. C22-0174 and in this NOPR rather than proceed to an enforcement action at this time. We intend for this rulemaking to remove any potential ambiguity contained in the relevant rules prior to taking any enforcement action. The issuance of this NOPR should not be interpreted as an indication that the Commission is unwilling or reluctant to enforce outage reporting and response requirements, but rather it is to ensure that rules are clear and consistent with the Commission's stated guidance as to what is considered a BES outage prior to potential, future enforcement actions.

C. Proposed Rule Changes

10. An overview of the changes proposed by the Commission fall into general categories described in this Decision. We invite interested stakeholders to comment on the proposed rules and provide additional suggested changes.

[4] *See* Decision No. C22-0174 issued in Proceeding No. 22R-0122T, para. 11-15.

11. **Rule 2131: Definitions.** Changes to the Definitions of the Basic Emergency Service Rules include the introduction of a definition for "primary designated PSAP" as well as modifications of the definitions for "basic emergency service," "basic emergency service outage," and "demarcation point."

12. A "primary designated PSAP" is defined as "the PSAP designated to the BESP as the primary or first PSAP meant to receive a call for a specific geographic area. This designation is determined by the governing body with jurisdictional authority for the geographic area from which the call originates.

13. Changes to the definitions of "basic emergency service" and "demarcation point" are necessary to incorporate the new terminology of the "primary designated PSAP." The changes to the definition of "basic emergency service outage" serve the same purpose, as well as to clarify that (1) an outage has still occurred even if 9-1-1 calls are rerouted to an alternate PSAP, and (2) that an outage has occurred any time a PSAP is unable to receive 9-1-1 calls due to an event or incident on the BESPs side of the demarcation point, even if the facilities involved in the event or incident serve a dual purpose and also provide OSP connectivity. The Commission requests specific comment on whether the proposed changes successfully convey the Commission's explanation in this NOPR of what is considered a BES outage.

14. Stakeholders have also expressed concern that changes made to these definitions must also reflect the reality that, in some cases, the demarcation point does not exist at the PSAP itself, but sometimes exists at a hosted customer premise equipment site or at a locally provided network that is then used to deliver the 9-1-1 call to the PSAP. Changes to the definitions of "basic emergency service," "basic emergency service outage," and "demarcation point," are intended to

accommodate these situations. The Commission seeks comment on whether the proposed rules successfully reflect this reality.

15. **Rule 2134: Process for Certification of BESPs.** Rule 2134(e), as adopted by the Commission in Decision No. R22-0811, requires BESPs actively providing BES to file updated information related to its BESP certification ever two years "from the grant of the application." However, it is not clear what this means in the case of the state's only active BESP, which has been providing BES since before requirement that BESPs obtain certification from the Commission. Therefore, the proposed rules would change "two years from the grant of the application" to "by March 30, 2025, and each two years thereafter." The date of March 30, 2025, was selected since that date is two years from the effective date of the rules adopted by Decision No. R22-0811. The Commission seeks comment on the appropriateness of this change and specifically if the date of March 30, 2025, is appropriate for the first filing of this required certification information update.

16. **Rule 2136: Obligations of Basic Emergency Service Providers.** Paragraph (l) is also added to this section, which imposes requirements on a BESP to notify potentially affected PSAPs of repair or maintenance being conducted that may have an impact on BES to a primary designated PSAP. Because of the critical nature of 9-1-1 service, when there is an opportunity for a PSAP to prepare itself for a potential outage, that opportunity should be taken in order to mitigate the impact of the outage on the public if it does occur. The intent of this paragraph is to provide PSAPs with that opportunity, when possible.[5] The Commission seeks comment on whether the obligations imposed here are appropriate and sufficient to meet this purpose.

[5] Some of the language in this paragraph was adapted from the current CenturyLink "EMERGENCY REPORTING SERVICES TARIFF COLO. P.U.C. NO. 25."

17. Additionally, the proposed revision of rule 2136 includes a correction to a typographical error in paragraph (a).

18. **Rule 2143: Basic Emergency Service Reliability and Outage Response.** Minor changes to this rule are proposed to clarify the Commission's requirements regarding outage notifications and reporting, both of which are required even if 9-1-1 calls were successfully rerouted to an alternate PSAP.

19. Changes to paragraph (j)(VII) increase billing credit requirements for outages that meet certain criteria if it is discovered by the Commission through a proceeding that the BESP failed to provide a required billing credit. It also clarifies that such billing credits are in addition to, not lieu of potential civil penalties that may be assessed as described in rules 2009 through 2011.

20. The Commission seeks comment on whether the proposed changes to 2143 are clear and effective, and whether the proposed changes to paragraph (j)(VII) are appropriate.

21. **Rule 2335: The Provision of Service During Maintenance or Emergencies**. Proposed changes to this rule are intended to update the cross-reference to Rule 2143 and to update the terminology.

D. Conclusion

22. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*; 40-2-108; 40-3-101, -102, -103, -107, -110; 40-4-101; 40-15-101, -201, -203.5, and -208, C.R.S.

23. The proposed rules in legislative (*i.e.*, strikeout/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's Electronic Filings (Efilings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=23R-0577T

24. The Commission encourages and invites public comment on all proposed rules. We request that commenters propose any changes in legislative redline format.

25. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

26. The ALJ will conduct a hearing on the proposed rules and related issues on January 29, 2024. Interested persons may submit written comments on the rules and present these orally at the hearing unless the ALJ deems oral presentations unnecessary.

27. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that comments be filed no later than January 10, 2024, and that any pre-filed comments responsive to the initial comments be submitted no later than January 19, 2024. The Commission prefers that comments be filed using its E-Filing System at: https://www.dora.state.co.us/pls/efi/EFI.homepage.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B) attached hereto, shall be filed with the Colorado Secretary of State for publication in the December 25, 2023, edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

3. A hearing on the proposed rules and related matters shall be held as follows:

DATE: January 29, 2024

TIME: 11:30 a.m.

PLACE: By video conference: using Zoom at a link the calendar of events on the Commission's website, available at: https://puc.colorado.gov/puccalendar.

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral comments unnecessary.

5. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than January 10, 2024, and that any pre-filed comments responsive to the initial comments be submitted no later than January 19, 2024. The Commission will consider all submissions, whether oral or written.

6. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING November 29, 2023.

(S E A L)

ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

Notice of Proposed Rulemaking

Tracking number

2023-00804

Department

100,800 - Department of Personnel and Administration

Agency

801 - State Personnel Board and State Personnel Director

CCR number

4 CCR 801-1

Rule title

STATE PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES

Rulemaking Hearing

Date

02/20/2024

Time

09:00 AM

Location

VIRTUAL ONLY Zoom Meeting (instructions in Notice of Hearing and below)

Subjects and issues involved

Chapters 1, 4, and 8. Board Rules 1-19 and 1-71 (in Chapter 1, Organization, Responsibilities, Ethics, Payroll Deduction, and Definitions), Board Rules 4-5 and 4-6 (in Chapter 4, Employment and Status), and Board Rules 8-6, 8-20, 8-33, 8-37, and 8-51 (in Chapter 8, Resolution of Appeals and Disputes).

Statutory authority

the Colorado Constitution, Art. XII, § 14; under the State Personnel System Act, including C.R.S. § 24-50-101(3); and under the Administrative Procedure Act, including C.R.S. § 24-4-103

Contact information

Name

DOUGLAS PLATT

Title

Communication Manager

Telephone

3035039939

Email

doug.platt@state.co.us

BOARD RULE 1-19. ~~(AS ADOPTED ON JUNE 21, 2022)~~ An employee may voluntarily and knowingly waive, in writing, all rights under the state personnel system, except where prohibited by state or federal law. By law, the State Personnel Board has exclusive jurisdiction over claims regarding, but not limited to, the following matters: 1) Disciplinary Actions as defined by Board Rule 6-12; 2) Actions that adversely affect an employee's pay, status, or tenure as identified by C.R.S. § 24-50-125(5); and 3) Claims under the State Employee Protection Act (a/k/a Whistleblower Act) by a classified state employee. Employees who pursue these claims must do so before the State Personnel Board. In circumstances where an employee or an applicant may waive their rights under the state personnel system, the waiver must: 1) Be made in writing; 2) Be signed by the employee or applicant; 3) Indicate it is knowing and voluntary; 4) Advise employees and applicants of their rights under the Colorado Constitution at Article XII, Section 13 and under the State Personnel System Act, including rights to appeal to the Board; and 5) Notify an employee or applicant that they may obtain information regarding the State Personnel Board on the Board's website (spb.colorado/gov).

BOARD RULE 1-71. Harass or Harassment. In determining whether harassment violates the Colorado Anti-Discrimination Act, "Harass" or "Harassment" means to engage in, or the act of engaging in, any unwelcome physical or verbal conduct or any written, pictorial, or visual communication directed at an individual or group of individuals because of that individual's or group's membership in a protected class under the Colorado Anti-Discrimination Act, which conduct or communication is subjectively offensive to the individual alleging harassment and is objectively offensive to a reasonable individual who is a member of the same protected class.

~~Sexual Harassment. Quid pro quo sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct is used as the basis for an employment decision. Hostile work environment sexual harassment is any harassment or unequal treatment based on sex, even if not sexual in nature, which results in unreasonable interference with an individual's work performance or creates an intimidating, hostile, or offensive working environment.~~

BOARD RULE 4-5. All job postings shall notify applicants of their appeal rights. Such notice shall include the time frame to file an appeal, the email address and the street address for filing the appeal, and the availability of any template appeal form.

~~All applicants shall meet minimum and special qualifications for the vacancy in order to be included in the comparative analysis process, referred for an interview or appointed to a position. Any required job qualifications shall be consistent with those minimum qualifications established by the State Personnel Director for classified positions within the~~

~~state personnel system. (3/30/13)~~

BOARD RULE 4-6. Applicants directly affected by the selection and comparative analysis process may petition the Board for review when it appears that the decision of the appointing authority violates an employee's rights under the Colorado Anti-Discrimination Act ("CADA"), the State Employee Protection Act (commonly known as the Whistleblower Act), or as otherwise provided by law. Any petitions to the Board relating to selection decisions shall be filed in accordance with Chapter 8, Resolution of Appeals and Disputes. ~~federal or state constitution, part 4 of article 34 of title 24, or article 50.5 of title 24. (3/30/13)~~

BOARD RULE 8-6(C)(5). Upon its receipt of a filing via email, the Board will send the filing party an email stating "Received." If disputed, that email may be used by a party as ~~will be the~~ proof of filing. The email will not be part of the record.

BOARD RULE 8-20(A)(5). ~~Absent an extension of time~~, The Board will issue a Notice of Preliminary Review or hearing after four ~~two~~ hundred and fifty ~~seventy~~ (450 ~~270~~) days from the date the Board referred the matter to the CCRD even if the CCRD investigation is not completed.

BOARD RULE 8-20(B)(6)(a)(i). For the Board to adopt the CCRD's opinion, the CCRD's findings must demonstrate that Complainant is unable to establish a *prima facie* case of discrimination as set forth in *Bodaghi & State Personnel Board v. Department of Natural Resources*, 995 P.2d 288 (Colo. 2000).

BOARD RULE 8-33(A)(1). Complainant shall produce all documents and recordings in Complainant's possession that are relevant to the factual allegations or claims at issue in the appeal. Complainant shall also produce any witnesses Complainant knows that may have information relevant to the factual allegations or claims, and a brief description of the information believed to be known by that witness.

If the Complainant is appealing a termination, the Complainant shall also produce all: a. Documents relevant to calculation of lost pay and benefits including:

i. Income and benefits of subsequent employment, including the last three (3) months of pay stubs.

> (a) Respondent shall not contact a prospective or current employer to discover information about Complainant without providing Complainant ten (10) days notice so Complainant has an opportunity to file a motion for protective order or a motion to quash. If Complainant files such a motion, Respondent shall not initiate contact until the motion is ruled upon.

ii. Unemployment benefit documents that are relevant to any calculation of damages.

~~b. Any witnesses that the Complainant knows that may have information relevant to the factual allegations or claims, and a brief description of the information believed to be~~

~~known by that witness.~~

BOARD RULE 8-37. Evidentiary Hearings.

A. Any stipulated exhibits and facts will be admitted into evidence.

B. The party with the burden of proof proceeds first and may call witnesses and seek the admission of evidence. The opposing party proceeds second and may call witnesses and seek the admission of additional evidence. In cases with mixed burdens of proof, the Administrative Law Judge shall determine the order of presentation on a case-by-case basis. Regardless of who has the burden, witnesses may be called out of order at the discretion of the Administrative Law Judge.

C. At the sole discretion of the Administrative Law Judge, a party may present rebuttal evidence.

D. Each party is responsible for deciding the witnesses to call at the hearing. Testimony is given under oath or affirmation. Each party may cross-examine the other party's witnesses.

E. Each party is responsible for deciding the exhibits to use and to offer for admission into evidence.

F. The Administrative Law Judge may call a witness and may also examine any witness called by a party.

G. The Administrative Law Judge will record the proceedings by an electronic recording device.

H. The Administrative Law Judge may issue orders to promote expeditious and efficient hearings, including limiting the time each side has to present its evidence.

BOARD RULE 8-51(E). Any party seeking sanctions or attorney fees shall file and serve a motion within ten (10) days of:

1. The alleged failure to comply with the provisions in this Chapter 8, Resolution of Appeals and Disputes, Part A;

2. When the party knows or reasonably should have known of the alleged abuse giving rise to the request for fees;

3. A final order of an Administrative Law Judge, including an order of dismissal; ~~or~~

4. An Initial Decision; or

5. A final order of the Board relating to action taken during a public Board Meeting.

SPB RULEMAKING (CHANGES ACCEPTED)

BOARD RULE 1-19. An employee may voluntarily and knowingly waive, in writing, all rights under the state personnel system, except where prohibited by state or federal law. By law, the State Personnel Board has exclusive jurisdiction over claims regarding, but not limited to, the following matters: 1) Disciplinary Actions as defined by Board Rule 6-12; 2) Actions that adversely affect an employee's pay, status, or tenure as identified by C.R.S. § 24-50-125(5); and 3) Claims under the State Employee Protection Act (a/k/a Whistleblower Act) by a classified state employee. Employees who pursue these claims must do so before the State Personnel Board. In circumstances where an employee or an applicant may waive their rights under the state personnel system, the waiver must: 1) Be made in writing; 2) Be signed by the employee or applicant; 3) Indicate it is knowing and voluntary; 4) Advise employees and applicants of their rights under the Colorado Constitution at Article XII, Section 13 and under the State Personnel System Act, including rights to appeal to the Board; and 5) Notify an employee or applicant that they may obtain information regarding the State Personnel Board on the Board's website (spb.colorado/gov).
BOARD RULE 1-71. <u>Harass or Harassment</u>. In determining whether harassment violates the Colorado Anti-Discrimination Act, "Harass" or "Harassment" means to engage in, or the act of engaging in, any unwelcome physical or verbal conduct or any written, pictorial, or visual communication directed at an individual or group of individuals because of that individual's or group's membership in a protected class under the Colorado Anti-Discrimination Act, which conduct or communication is subjectively offensive to the individual alleging harassment and is objectively offensive to a reasonable individual who is a member of the same protected class.
BOARD RULE 4-5. All job postings shall notify applicants of their appeal rights. Such notice shall include the time frame to file an appeal, the email address and the street address for filing the appeal, and the availability of any template appeal form.
BOARD RULE 4-6. Applicants directly affected by the selection and comparative analysis process may petition the Board for review when it appears that the decision of the appointing authority violates an employee's rights under the Colorado Anti-Discrimination Act ("CADA"), the State Employee Protection Act (commonly known as the Whistleblower Act), or as otherwise provided by law. Any petitions to the Board relating to selection decisions shall be filed in accordance with Chapter 8, Resolution of Appeals and Disputes.
BOARD RULE 8-6(C)(5). Upon its receipt of a filing via email, the Board will send the filing party an email stating "Received." If disputed, that email may be used by a party as proof of filing. The email will not be part of the record.
BOARD RULE 8-20(A)(5). The Board will issue a Notice of Preliminary Review or hearing after four hundred and fifty (450) days from the date the Board referred the matter to the

CCRD even if the CCRD investigation is not completed.

BOARD RULE 8-20(B)(6)(a)(i). For the Board to adopt the CCRD's opinion, the CCRD's findings must demonstrate that Complainant is unable to establish a *prima facie* case of discrimination as set forth in *Bodaghi & State Personnel Board v. Department of Natural Resources*, 995 P.2d 288 (Colo. 2000).

BOARD RULE 8-33(A)(1). Complainant shall produce all documents and recordings in Complainant's possession that are relevant to the factual allegations or claims at issue in the appeal. Complainant shall also produce any witnesses Complainant knows that may have information relevant to the factual allegations or claims, and a brief description of the information believed to be known by that witness.

If the Complainant is appealing a termination, the Complainant shall also produce all: a. Documents relevant to calculation of lost pay and benefits including:

i. Income and benefits of subsequent employment, including the last three (3) months of pay stubs.

(a) Respondent shall not contact a prospective or current employer to discover information about Complainant without providing Complainant ten (10) days notice so Complainant has an opportunity to file a motion for protective order or a motion to quash. If Complainant files such a motion, Respondent shall not initiate contact until the motion is ruled upon.

ii. Unemployment benefit documents that are relevant to any calculation of damages.

BOARD RULE 8-37. Evidentiary Hearings.

A. Any stipulated exhibits and facts will be admitted into evidence.

B. The party with the burden of proof proceeds first and may call witnesses and seek the admission of evidence. The opposing party proceeds second and may call witnesses and seek the admission of additional evidence. In cases with mixed burdens of proof, the Administrative Law Judge shall determine the order of presentation on a case-by-case basis. Regardless of who has the burden, witnesses may be called out of order at the discretion of the Administrative Law Judge.

C. At the sole discretion of the Administrative Law Judge, a party may present rebuttal evidence.

D. Each party is responsible for deciding the witnesses to call at the hearing. Testimony is given under oath or affirmation. Each party may cross-examine the other party's witnesses.

E. Each party is responsible for deciding the exhibits to use and to offer for admission into evidence.

F. The Administrative Law Judge may call a witness and may also examine any witness

called by a party.

G. The Administrative Law Judge will record the proceedings by an electronic recording device.

H. The Administrative Law Judge may issue orders to promote expeditious and efficient hearings, including limiting the time each side has to present its evidence.

BOARD RULE 8-51(E). Any party seeking sanctions or attorney fees shall file and serve a motion within ten (10) days of:

1. The alleged failure to comply with the provisions in this Chapter 8, Resolution of Appeals and Disputes, Part A;

2. When the party knows or reasonably should have known of the alleged abuse giving rise to the request for fees;

3. A final order of an Administrative Law Judge, including an order of dismissal;

4. An Initial Decision; or

5. A final order of the Board relating to action taken during a public Board Meeting.

Notice of Proposed Rulemaking

Tracking number

2023-00813

Department

1000 - Department of Public Health and Environment

Agency

1002 - Water Quality Control Commission

CCR number

5 CCR 1002-38

Rule title

REGULATION NO. 38 - CLASSIFICATIONS AND NUMERIC STANDARDS SOUTH PLATTE RIVER BASIN LARAMIE RIVER BASIN REPUBLICAN RIVER BASIN SMOKY HILL RIVER BASIN

Rulemaking Hearing

Date

02/12/2024

Time

09:00 AM

Location

Sabin Cleere Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 Or Remote Via Zoom

Subjects and issues involved

For consideration, upon the commissions motion pursuant to section 25-8-207(1), C.R.S., of adoption of revisions to the Classifications and Numeric Standards for South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin, Regulation #38 (5 CCR 1002-38) pertaining to the following segments:

Upper South Platte Segment 16d (COSPUS16d);
Upper South Platte Segment 16e (COSPUS16e);
Upper South Platte Segment 16f (COSPUS16f);
Middle South Platte Segment 3b (COSPMS3b).

Proposed revisions, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibit 1.

In these attachments, proposed new language is shown with underlining and proposed deletions are shown with strikeouts. Any alternative proposals related to the subject of this hearing will also be considered.

Statutory authority

The provisions of sections 25-8-202(1)(a), (b); 25-8-203; 25-8-204; 25-8-207, and 25-8-402, C.R.S., provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

Contact information

Name

Jojo La

Title

Administrator

Telephone

720.277.9262

Email

jojo.la@state.co.us

NOTICE OF PUBLIC RULEMAKING HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration, upon the commission's motion pursuant to section 25-8-207(1), C.R.S., of adoption of revisions to the Classifications and Numeric Standards for South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin, Regulation #38 (5 CCR 1002-38) pertaining to the following segments:

- Upper South Platte Segment 16d (COSPUS16d);
- Upper South Platte Segment 16e (COSPUS16e);
- Upper South Platte Segment 16f (COSPUS16f);
- Middle South Platte Segment 3b (COSPMS3b).

Proposed revisions, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibit 1.

In these attachments, proposed new language is shown with underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the subject of this hearing will also be considered.

SCHEDULE OF IMPORTANT DATES

Party Status requests due	1/3/2024	Additional information below.
Responsive prehearing statements due	1/24/2024	Additional information below.
Rulemaking Hearing	2/12/2023 9:00 am	Sabin Cleere Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 Or Remote Via Zoom

HEARING SUBMITTALS:

For this hearing, the commission will receive all submittals electronically. Submittals must be provided as PDF documents, except for raw data exhibits which may be provided as Excel workbooks. Submittals may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, or otherwise conveyed to the commission office to be received no later than the specified date.

PARTY STATUS:

Party status requests must be in writing and must provide:

- the organization's name,
- one contact person,
- a mailing address,
- a phone number, and
- email addresses of all individuals associated with the party who wish to be notified when new submittals are available on the commission's website for review.

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate, along with an explanation of the alleged harm, in their party status request.

PREHEARING AND REBUTTAL STATEMENTS:

Each prehearing statement must be provided as a separate PDF document from any accompanying written testimony or exhibits.

Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status will not be permitted unless authorized by the commission.

PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages input from non-parties, either orally at the hearing or in writing prior to the hearing. Written submissions should be emailed to cdphe.wqcc@state.co.us by February 7, 2024.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(a), (b); 25-8-203; 25-8-204; 25-8-207, and 25-8-402, C.R.S., provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

Dated this 15th day of December 2023 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Jojo La, Administrator

38.101 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; FEBRUARY 12, 2024 RULEMAKING; FINAL ACTION 13, 2020; FEBRUARY 12, 2024; EFFECTIVE DATE APRIL 30, 2024

The provisions of C.R.S. 25-8-202(1)(a), (b) and (2); 25-8-203; 25-8-204; and 25-8-402; provide the specific statutory authority for adoption of these regulatory amendments. The commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE

The commission initiated this rulemaking hearing upon its own motion pursuant to section 25-8-207, C.R.S. to review the consistency of use classifications and standards for certain segments in the Upper and Middle South Platte Rivers, and specifically to determine whether such classifications and standards were adopted based on material assumptions that were in error or no longer apply (§ 25-8-207(1)(b), C.R.S.; Regulation #31, § 31.6(3)(b)(iii)).

During the Regulation #93 hearing process in 2023, it came to the commission's attention that there was disagreement between the City and County of Denver (Denver) and the division staff concerning the intent behind the descriptions in Regulation #38 (Classifications and Numeric Standards for South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin) for certain segments in the Upper South Platte and Middle South Platte River basins that flow through Denver International Airport (DEN) property.

In the 2023 Regulation #93 proceeding, the division proposed to include Upper South Platte Segment 16c (COSPUS16c) on Colorado's 303(d) List of Impaired Waters for E. coli and selenium. Segment COSPUS16c is an "all tributaries" segment to the Upper South Platte River to which table value standards apply. The division's Storymap, Colorado's Integrated Water Quality Monitoring and Assessment Report to report on the status of Colorado's streams and lakes, and other division documents indicated that certain small tributaries running through DEN property were included in COSPUS16c. The division's inclusion of these small tributaries in COSPUS16c was based on its reading of segment descriptions adopted during a Regulation #38 rulemaking hearing in 2004, where Denver had proposed resegmentation and site-specific standards for the segments flowing through DEN property.

Denver, on the other hand, had a different understanding of its 2004 proposal, and accordingly sought clarification from the commission in the context of Regulation #93 that the small tributaries at-issue were instead part of Upper South Platte Segments 16d, 16e, and 16f (COSPUS16d, COSPUS16e, and COSPUS16f, respectively), and Middle South Platte Segment 3b (COSPMS03b) — and not the segment proposed for listing, COSPUS16c.

The commission ultimately adopted the division's Regulation #93 proposal for the listing of COSPUS16c as impaired for E. coli and selenium, while noting in the Statement of Basis and Purpose that it agreed with the division's reading that the small tributaries on the DEN property were part of that segment. The commission denied a subsequent motion for reconsideration by Denver but directed the division and Denver to work together for a resolution to the disagreement about the DEN segment descriptions.

To carry out this directive, division and commission staff conducted a comprehensive review of the 2004 Regulation #38 hearing record and discovered documentation indicating that the division had asked Denver, in delineating the upstream point of the proposed new segments, to change the term "headwaters" in its proposal to "from the source." The commission views this as evidence of the parties' intent to include the "sources" (i.e., the small tributaries) for segments COSPUS16d, COSPUS16e, COSPUS16f, and COSPMS03b in those respective segments, rather than including them in the "all tributaries" segment COSPUS16c.

Section 25-8-207(2) instructs the commission to establish appropriate classifications and standards where it finds an existing inconsistency that is based on erroneous "material assumptions." The

commission hereby finds the “material assumption” that the 2004 Regulation #38 rulemaking resulted in the small tributaries at-issue being part of COSPUS16c (including the standards and classifications that are attached to that segment) was in error. Through the current rulemaking, the commission seeks to correct this inconsistency and to clarify Denver and the division’s (and therefore the commission’s) intent behind the 2004 Regulation #38 segment descriptions, as demonstrated through evidence in the 2004 hearing record. This is being accomplished by adding the words “including all tributaries” to the descriptions for segments COSPUS16d, COSPUS16e, COSPUS16f, and COSPMS03b. The commission hereby declares the classifications and standards for COSPUS16c as they previously applied to the small tributaries at-issue void ab initio and simultaneously attaches the standards and classifications for segments COSPUS16d, COSPUS16e, COSPUS16f, and COSPMS03b to those small tributaries, as appropriate.

REGULATION #38 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS
Upper South Platte River Basin

16d. Second Creek, including all tributaries, from the source to the O'Brian Canal at 39.898789, 104.817661.

COSPUS16D	Classifications
Designation	Agriculture
UP	Aq Life Warm 2
	Recreation E

Qualifiers:

Other:

*Phosphorus(chronic) = applies only above the facilities listed at 38.5(4).
*Uranium(acute) = See 38.5(3) for details.
*Uranium(chronic) = See 38.5(3) for details.
*D.O. (mg/L)(chronic) = 15th percentile of D.O. measurements collected between 6:30 a.m. and 6:30 p.m.

Physical and Biological	DM	MWAT
Temperature °C	WS-III	WS-III
	acute	**chronic**
D.O. (mg/L)	---	3.3*
pH	6.5 - 9.0	---
chlorophyll a (mg/m2)	---	TVS
E. coli (per 100 ml)	---	126
Inorganic (mg/L)		
	acute	**chronic**
Ammonia	TVS	TVS
Boron	---	0.75
Chloride	---	---
Chlorine	0.019	0.011
Cyanide	0.005	---
Nitrate	100	---
Nitrite	---	0.5
Phosphorus	---	TVS*
Sulfate	---	---
Sulfide	---	0.002

Metals (ug/L)	acute	chronic
Arsenic	340	---
Arsenic(T)	---	100
Cadmium	TVS	TVS
Chromium III	TVS	TVS
Chromium III(T)	---	100
Chromium VI	TVS	TVS
Copper	TVS	TVS
Iron(T)	---	1000
Lead	TVS	TVS
Manganese	TVS	TVS
Mercury(T)	---	0.01
Molybdenum(T)	---	150
Nickel	TVS	TVS
Selenium	TVS	TVS
Silver	TVS	TVS
Uranium	varies*	varies*
Zinc	TVS	TVS

16e. Third Creek, including all tributaries, from the source to the O'Brian Canal at 39.917346, -104.784028.

COSPUS16E	Classifications
Designation	Agriculture
UP	Aq Life Warm 2
	Water Supply
	Recreation E

Qualifiers:

Other:

*Uranium(acute) = See 38.5(3) for details.
*Uranium(chronic) = See 38.5(3) for details.
*D.O. (mg/L)(chronic) = 15th percentile of D.O. measurements collected between 6:30 a.m. and 6:30 p.m.

Physical and Biological	DM	MWAT
Temperature °C	WS-III	WS-III
	acute	**chronic**
D.O. (mg/L)	---	4.0*
pH	6.5 - 9.0	---
chlorophyll a (mg/m2)	---	TVS
E. coli (per 100 ml)	---	126
Inorganic (mg/L)		
	acute	**chronic**
Ammonia	TVS	TVS
Boron	---	0.75
Chloride	---	250
Chlorine	0.019	0.011
Cyanide	0.005	---
Nitrate	10	---
Nitrite	---	0.5
Phosphorus	---	---
Sulfate	---	WS
Sulfide	---	0.002

Metals (ug/L)	acute	chronic
Arsenic	340	---
Arsenic(T)	---	0.02-10 [A]
Cadmium	TVS	TVS
Cadmium(T)	5.0	---
Chromium III	---	TVS
Chromium III(T)	50	---
Chromium VI	TVS	TVS
Copper	TVS	TVS
Iron	---	WS
Iron(T)	---	1000
Lead	TVS	TVS
Lead(T)	50	---
Manganese	TVS	TVS/WS
Mercury(T)	---	0.01
Molybdenum(T)	---	150
Nickel	TVS	TVS
Nickel(T)	---	100
Selenium	TVS	TVS
Silver	TVS	TVS
Uranium	varies*	varies*
Zinc	TVS	TVS

REGULATION #38 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS
Upper South Platte River Basin

16f. Barr Lake Tributary, including all tributaries, from the source to the Denver Hudson Canal at 39.941142, -104.748387.

COSPUS16F	Classifications
Designation	Agriculture
UP	Aq Life Warm 2
	Recreation E

Qualifiers:

Other:

*Phosphorus(chronic) = applies only above the facilities listed at 38.5(4).

*Uranium(acute) = See 38.5(3) for details.

*Uranium(chronic) = See 38.5(3) for details.

*D.O. (mg/L)(chronic) = When water is present, D.O. concentrations shall be maintained at levels that protect classified uses.

Physical and Biological	DM	MWAT
Temperature °C	WS-III	WS-III
	acute	**chronic**
D.O. (mg/L)	---	narrative*
pH	6.5 - 9.0	---
chlorophyll a (mg/m2)	---	TVS
E. coli (per 100 mL)	---	126
Inorganic (mg/L)		
	acute	**chronic**
Ammonia	TVS	TVS
Boron	---	0.75
Chloride	---	---
Chlorine	0.019	0.011
Cyanide	0.005	---
Nitrate	100	---
Nitrite	---	0.5
Phosphorus	---	TVS*
Sulfate	---	---
Sulfide	---	0.002

Metals (ug/L)	acute	chronic
Arsenic	340	---
Arsenic(T)	---	100
Cadmium	TVS	TVS
Chromium III	TVS	TVS
Chromium III(T)	---	100
Chromium VI	TVS	TVS
Copper	TVS	TVS
Iron(T)	---	1000
Lead	TVS	TVS
Manganese	TVS	TVS
Mercury(T)	---	0.01
Molybdenum(T)	---	150
Nickel	TVS	TVS
Selenium	TVS	TVS
Silver	TVS	TVS
Uranium	varies*	varies*
Zinc	TVS	TVS

REGULATION #38 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS
Middle South Platte River Basin

3b. Hayesmount Tributaries, including all tributaries, including the Upper Hayesmount Tributary from the source to the confluence with Box Elder Creek and the Lower Hayesmount Tributaries from the source to the Denver Hudson Canal.

COSPMS03B	Classifications
Designation	Agriculture
UP	Aq Life Warm 2
	Recreation E

Qualifiers:

Other:

*Uranium(acute) = See 38.5(3) for details.

*Uranium(chronic) = See 38.5(3) for details.

*D.O. (mg/L)(chronic) = When water is present, D.O. concentrations shall be maintained at levels that protect classified uses.

Physical and Biological

	DM	MWAT
Temperature °C	WS-III	WS-III
	acute	**chronic**
D.O. (mg/L)	---	narrative*
pH	6.5 - 9.0	---
chlorophyll a (mg/m^2)	---	TVS
E. coli (per 100 mL)	---	126

Inorganic (mg/L)

	acute	chronic
Ammonia	TVS	TVS
Boron	---	0.75
Chloride	---	---
Chlorine	0.019	0.011
Cyanide	0.005	---
Nitrate	100	---
Nitrite	---	0.5
Phosphorus	---	TVS
Sulfate	---	---
Sulfide	---	0.002

Metals (ug/L)

	acute	chronic
Arsenic	340	---
Arsenic(T)	---	100
Cadmium	TVS	TVS
Chromium III	TVS	TVS
Chromium III(T)	---	100
Chromium VI	TVS	TVS
Copper	TVS	TVS
Iron(T)	---	1000
Lead	TVS	TVS
Manganese	TVS	TVS
Mercury(T)	---	0.01
Molybdenum(T)	---	150
Nickel	TVS	TVS
Selenium	TVS	TVS
Silver	TVS	TVS
Uranium	varies*	varies*
Zinc	TVS	TVS

Notice of Proposed Rulemaking

Tracking number

2023-00812

Department

1000 - Department of Public Health and Environment

Agency

1002 - Water Quality Control Commission

CCR number

5 CCR 1002-102

Rule title

Water Quality Control Division Cash Fees

Rulemaking Hearing

Date

05/13/2024

Time

09:00 AM

Location

Sabin Cleere Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 Or Remote Via Zoom

Subjects and issues involved

For consideration of promulgating a new regulation, Regulation #102: Water Quality Control Division Cash Fees (5 CCR 1002-102), for setting fees for drinking water fees assessed on public water systems and commerce and industry sector permitting fees.

The regulation as proposed by the Water Quality Control Division, along with proposed Statement of Basis, Specific Statutory Authority and Purpose are attached to this notice as Exhibit 1. Any alternative proposals related to the subject of this hearing will also be considered.

Statutory authority

Section 25-8-210, C.R.S. provides the specific statutory authority for consideration of the regulatory provisions proposed by this notice. Should the commission adopt the regulatory language as proposed in this notice or an alternative proposal, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

Contact information

Name

Nicole Rowan

Title

Director, Water Quality Control Division

Telephone

720-916-8937

Email

nicole.rowan@state.co.us

NOTICE OF PUBLIC RULEMAKING HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of promulgating a new regulation, Regulation #102: Water Quality Control Division Cash Fees (5 CCR 1002-102), for setting fees for drinking water fees assessed on public water systems and commerce and industry sector permitting fees.

The regulation as proposed by the Water Quality Control Division, along with proposed Statement of Basis, Specific Statutory Authority and Purpose are attached to this notice as Exhibit 1. Any alternative proposals related to the subject of this hearing will also be considered.

SCHEDULE OF IMPORTANT DATES

Proponent's prehearing statement due	2/14/2024	Additional information below
Party status requests due	3/6/2024	Additional information below
Responsive prehearing statements due	3/27/2024	Additional information below
Rebuttal statements due	4/24/2024	Additional information below
Last date for submittal of motions	4/26/2024 by noon	Additional information below
Prehearing Conference (mandatory for parties)	5/1/2024 2:00 pm	Remote Via Zoom Additional information below
Cutoff of negotiations	5/3/2024	N/A
Division's consolidated proposal	5/8/2024	N/A
Rulemaking Hearing	5/13/2024 9:00 am	Sabin Cleere Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 Or Remote Via Zoom

HEARING SUBMITTALS:

For this hearing, the commission will receive all submittals electronically. Submittals must be provided as PDF documents, except for raw data exhibits which may be provided as Excel workbooks. Submittals 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 specified date.

PARTY STATUS:

Party status requests must be in writing and must provide:

- the organization's name,
- one contact person,
- a mailing address,
- a phone number, and
- email addresses of all individuals associated with the party who wish to be notified when new submittals are available on the commission's website for review.

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate, along with an explanation of the alleged harm, in their party status request.

PREHEARING AND REBUTTAL STATEMENTS:

Each party must submit a prehearing statement: parties that have proposed revisions attached as exhibits to the notice must submit a proponent's prehearing statement. All other parties must submit a responsive prehearing statement. Proponents may also submit responsive prehearing statements when there are multiple proposals attached to the notice.

Each prehearing and rebuttal statement must be provided as a separate PDF document from any accompanying written testimony or exhibits.

Following the rebuttal statement due date, no other written materials will be accepted from parties except for good cause shown.

Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status will not be permitted unless authorized by the commission.

PREHEARING CONFERENCE:

Attendance at the prehearing conference is mandatory for all persons requesting party status. The Zoom link to attend the prehearing conference is provided above.

Following the cut-off date for motions, no motions will be accepted, except for good cause shown.

PUBLIC PARTICIPATION ENCOURAGED:

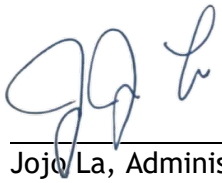
The commission encourages input from non-parties, either orally at the hearing or in writing prior to the hearing. Written submissions should be emailed to cdphe.wqcc@state.co.us by May 1, 2024.

SPECIFIC STATUTORY AUTHORITY:

Section 25-8-210, C.R.S. provides the specific statutory authority for consideration of the regulatory provisions proposed by this notice. Should the commission adopt the regulatory language as proposed in this notice or an alternative proposal, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

Dated this 4th day of December 2023 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION



Jojo La, Administrator

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 102 - WATER QUALITY CONTROL DIVISION CASH FEES

5 CCR 1002-102

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

102.1 AUTHORITY

These regulations are promulgated pursuant to the Colorado Water Quality Control Act, section 25-8-205, C.R.S., and section 25-8-210, C.R.S.

102.2 PURPOSE

The purpose of this regulation is to set fees associated with the drinking water cash fund and the commerce and industry cash fund. The drinking water cash fees cover a portion of the Division's direct and indirect costs associated with implementing the federal "Safe Drinking Water Act," 42 U.S.C., sec 300f et seq. and Section 25-1-114.1, Part 2 of Article 1.5, C.R.S. The commerce and industry cash fees cover a portion of the Division's direct and indirect costs associated with implementing the "Clean Water Act," 33 U.S.C. sec 1251 et seq. and the "Water Quality Control Act" (C.R.S. Title 25, Art. 8) for the commerce and industry sector.

102.3 DEFINITIONS

(1) "Colorado Water Quality Control Act" or "Act" means the Colorado Water Quality Control Act as from time to time amended, section 25-8-101, C.R.S., 1973, et seq.

(2) "Commission" means the water quality control commission created by section 25-8-201, C.R.S.

(3) "Division" means the Colorado Department of Public Health and Environment, Water Quality Control Division.

102.4 DRINKING WATER CASH FEES

(1) INTRODUCTION

The cash fees generated from this section shall be used to implement the Division's drinking water program. These fees cover a portion of the Division's direct and indirect costs associated with administering the federal "Safe Drinking Water Act", 42 U.S.C. sec. 300f et seq. and section 25-1-114.1, C.R.S. and C.R.S. Title 25, Art. 1.5, Pt. 2. All fees shall be credited to the drinking water cash fund per section 25-1.5-209(2)(a), C.R.S.

(2) DRINKING WATER ANNUAL CASH FEE SCHEDULE

The following 102.4(2) Table A contains the drinking water cash fee schedule. The Division may assess an annual fee upon public water systems, and all such fees shall be in accordance with 102.4 Table A.

102.4(2) TABLE A DRINKING WATER CASH ANNUAL FEE SCHEDULE		
Facility Categories and Subcategories for Drinking Water Fees		Annual Fees
(a) Category 01 Community surface water systems		
Subcategory 1	Population from 25 - 250	$85
Subcategory 2	Population from 251 - 500	$113
Subcategory 3	Population from 501 - 1,000	$350
Subcategory 4	Population from 1,001 - 3,300	$525
Subcategory 5	Population from 3,301 - 10,000	$977
Subcategory 6	Population from 10,001 - 30,000	$2,091
Subcategory 7	Population from 30,001 - 100,000	$5,582
Subcategory 8	Population from 100,001 - 200,000	$10,475
Subcategory 9	Population from 200,001 - 500,000	$17,459
Subcategory 10	Population greater than 500,000	$24,442
(b) Category 02 Community groundwater systems		
Subcategory 1	Population from 25 - 250	$85
Subcategory 2	Population from 251 - 500	$113
Subcategory 3	Population from 501 - 1,000	$249
Subcategory 4	Population from 1,001 - 3,300	$350
Subcategory 5	Population from 3,301 - 10,000	$768
Subcategory 6	Population from 10,001 - 30,000	$1,746
Subcategory 7	Population greater than 30,001	$5,029
(c) Category 03 Community-purchased surface water or groundwater systems		
Subcategory 1	Population from 25 - 250	$85
Subcategory 2	Population from 251 - 500	$113
Subcategory 3	Population from 501 - 1,000	$175
Subcategory 4	Population from 1,001 - 3,300	$283
Subcategory 5	Population from 3,301 - 10,000	$554
Subcategory 6	Population from 10,001 - 30,000	$977
Subcategory 7	Population greater than 30,001	$2,791
(d) Category 04 Nontransient, noncommunity surface water systems		
Subcategory 1	Population from 25 - 250	$85
Subcategory 2	Population from 251 - 500	$113
Subcategory 3	Population from 501 - 1,000	$316
Subcategory 4	Population from 1,001 - 3,300	$452
Subcategory 5	Population from 3,301 - 10,000	$701
Subcategory 6	Population from 10,001 - 30,000	$1,887

102.4(2) TABLE A DRINKING WATER CASH ANNUAL FEE SCHEDULE		
Facility Categories and Subcategories for Drinking Water Fees		Annual Fees
Subcategory 7	Population greater than 30,001	$4,450
(e) Category 05 Nontransient, noncommunity groundwater systems		
Subcategory 1	Population from 25 - 250	$85
Subcategory 2	Population from 251 - 500	$113
Subcategory 3	Population from 501 - 1,000	$175
Subcategory 4	Population from 1,001 - 3,300	$277
Subcategory 5	Population from 3,301 - 10,000	$559
Subcategory 6	Population from 10,001 - 30,000	$1,537
Subcategory 7	Population greater than 30,001	$4,125
(f) Category 06 Nontransient, noncommunity-purchased surface water or groundwater systems		
Subcategory 1	Population from 25 - 250	$85
Subcategory 2	Population from 251 - 500	$113
Subcategory 3	Population from 501 - 1,000	$141
Subcategory 4	Population from 1,001 - 3,300	$209
Subcategory 5	Population from 3,301 - 10,000	$367
Subcategory 6	Population from 10,001 - 30,000	$910
Subcategory 7	Population greater than 30,001	$2,237
(g) Category 07 Transient, noncommunity surface water systems		
Subcategory 1	Population from 25 - 250	$85
Subcategory 2	Population from 251 - 500	$113
Subcategory 3	Population from 501 - 1,000	$277
Subcategory 4	Population from 1,001 - 3,300	$350
Subcategory 5	Population from 3,301 - 10,000	$627
Subcategory 6	Population from 10,001 - 30,000	$701
Subcategory 7	Population greater than 30,001	$4,475
(h) Category 08 Transient, noncommunity groundwater systems		
Subcategory 1	Population from 25 - 250	$85
Subcategory 2	Population from 251 - 500	$113
Subcategory 3	Population from 501 - 1,000	$141
Subcategory 4	Population from 1,001 - 3,300	$209
Subcategory 5	Population from 3,301 - 10,000	$559
Subcategory 6	Population from 10,001 - 30,000	$605
Subcategory 7	Population greater than 30,001	$3,356
(i) Category 09 Transient, noncommunity-purchased surface water or groundwater systems		

102.4(2) TABLE A DRINKING WATER CASH ANNUAL FEE SCHEDULE		
Facility Categories and Subcategories for Drinking Water Fees		Annual Fees
Subcategory 1	Population from 25 - 250	$85
Subcategory 2	Population from 251 - 500	$113
Subcategory 3	Population from 501 - 1,000	$124
Subcategory 4	Population from 1,001 - 3,300	$141
Subcategory 5	Population from 3,301 - 10,000	$350
Subcategory 6	Population from 10,001 - 30,000	$492
Subcategory 7	Population greater than 30,001	$1,684

102.5 COMMERCE AND INDUSTRY SECTOR CASH FEES

(1) INTRODUCTION

The cash fees generated from this section shall be used to implement clean water program activities associated with the commerce and industry sector. These fees cover a portion of the Division's direct and indirect costs associated with administering the federal "Clean Water Act," 33 U.S.C. sec. 1251 et seq. and "Water Quality Control Act" (C.R.S. Title 25, Art. 8) for the commerce and industry sector. All fees shall be credited to the clean water cash fund per section 25-8-210(4), C.R.S.

(2) COMMERCE AND INDUSTRY CASH FEE SCHEDULE

This section includes the clean water annual cash fee schedules for the commerce and industry fee payor type. The Division may assess an annual fee upon commerce and industry fee payors, and all such fees shall be in accordance with 102.5(2) Table A. The commerce and industry fee payor type includes activities associated with mining, hydrocarbon refining, sugar processing, industrial stormwater, utilities not included in the private and public utilities sector, manufacturing activities, commercial activities, and all other industrial activities.

102.5(2) Table A Commerce and Industry Annual Cash Fee Schedule		
Fee Subcategory	Description	Annual Fee
Category 1 Sand and gravel and placer mining individual permit		
I-A	Pit dewatering only	$910
I-B	Pit dewatering or wash-water discharge	$1,037
I-C	Mercury use with discharge impact	$1,164
I-D	Storm water discharge only	$791
Category 2 Coal mining individual permit		
II-A	Sedimentation ponds, surface runoff only	$1,783
II-B	Mine water, preparation plant discharge	$2,401
Category 3 Hard rock mining individual permit		

102.5(2) Table A Commerce and Industry Annual Cash Fee Schedule		
Fee Subcategory	Description	Annual Fee
III-A	Mine dewatering from 0 up to 49,999 gallons per day	$2,074
III-B	Mine dewatering from 50,000 up to 999,999 gallons per day	$3,912
III-C	Mine dewatering, 1,000,000 gallons per day or more	$5,968
III-D	Mine dewatering and milling with no discharge	$5,968
III-E	Mine dewatering and milling with discharge	$17,975
III-F	No discharge	$2,074
III-G	Milling with discharge from 0 up to 49,999 gallons per day	$6,095
III-H	Milling with discharge, 50,000 gallons per day or more	$12,153
Category 4 Oil Shale		
IV-A	Sedimentation ponds, surface runoff only	$3,621
IV-B	Mine water from 0 up to 49,999 gallons per day	$3,912
IV-C	Mine water from 50,000 up to 999,999 gallons per day	$4,858
IV-D	Mine water from 1,000,000 gallons per day or more	$4,730
IV-E	Mine water and process water discharge	$17,975
IV-F	No discharge	$3,329
Category 5 General Permits		
V-A	Sand and gravel with process discharge and storm water	$492
V-B	Sand and gravel without process discharge - storm water only	$137
V-C	Placer mining	$946
V-D	Coal mining	$1,419
V-E	Industrial - single municipal industrial - storm water only	$337
V-F	Active mineral mines less than ten acres - storm water only	$227
V-G	Active mineral mines - ten acres or more - storm water only	$683
V-H	Inactive mineral mines - storm water only	$137
V-I	Department of transportation - sand and gravel storm-water permit	$7,933
V-J	Coal degasification - process water from 0 up to 49,999 gallons per day	$3,912
V-K	Coal degasification - process water from 50,000 up to 99,999 gallons per day	$5,968
V-L	Coal degasification - process water, 100,000 gallons per day or more	$17,975
V-M	Minimal discharge of industrial or commercial waste waters -	$712

102.5(2) Table A Commerce and Industry Annual Cash Fee Schedule		
Fee Subcategory	Description	Annual Fee
	general permit	
Category 6 Power plants		
VI-A	Cooling water only, no discharge	$2,074
VI-B	Process water from 0 up to 49,999 gallons per day	$3,912
VI-C	Process water from 50,000 up to 999,999 gallons per day	$5,968
VI-D	Process water from 1,000,000 up to 4,999,999 gallons per day	$17,975
VI-E	Process water, 5,000,000 gallons per day or more	$17,975
Category 7 Sugar Processing		
VII-A	Cooling water only, no discharge	$2,201
VII-B	Process water from 0 up to 49,999 gallons per day	$2,693
VII-C	Process water from 50,000 up to 999,999 gallons per day	$6,731
VII-D	Process water from 1,000,000 up to 4,999,999 gallons per day	$17,975
VII-E	Process water, 5,000,000 gallons per day or more	$17,975
Category 8 Petroleum refining		
VIII-A	Cooling water only, no discharge	$2,074
VIII-B	Process water from 0 up to 49,999 gallons per day	$4,658
VIII-C	Process water from 50,000 up to 999,999 gallons per day	$5,977
VIII-D	Process water from 1,000,000 up to 4,999,999 gallons per day	$17,975
VIII-E	Process water, 5,000,000 gallons per day or more	$17,975
Category 9 Fish Hatcheries		
IX	Fish hatcheries	$1,492
Category 10 Manufacturing and other industry:		
X-A	Cooling water only	$2,074
X-B	Process water from 0 up to 49,999 gallons per day	$3,912
X-C	Process water from 50,000 up to 999,999 gallons per day	$5,968
X-D	Process water from 1,000,000 up to 4,999,999 gallons per day	$17,975
X-E	Process water from 5,000,000 up to 19,999,999 gallons per day	$22,086
X-F	Process water, 20,000,000 gallons per day or more	$35,950
X-G	No discharge	$2,693
X-H	Amusement and recreation services	$2,693

102.5(2) Table A Commerce and Industry Annual Cash Fee Schedule		
Fee Subcategory	Description	Annual Fee
Category 11 Individual industrial storm-water permits:		
XI-A	Individual industrial - less than ten acres	$537
XI-B	Individual industrial - ten acres or more	$683
XI-C	Individual industrial - storm water only - international airports	$11,316

(3) CLEAN WATER CASH FEES FOR REGULATORY REQUIREMENTS

This section includes the clean water cash fee schedules for the following regulatory requirements: permit application and permit modification.

(a) Permit Application Fee

The Division may assess an annual permit fee and a nonrefundable permit application fee for new permits that must equal fifty percent of the annual permit fee in Section 102.5(2).

(b) Permit Modification Fee

The Division may assess a fee for an amendment or modification to permits. For minor amendments, the fee must be in an amount equal to twenty-five percent of the annual permit fee in Section 102.5(2) for the permit being amended, not to exceed two thousand eight hundred ten dollars. For major amendments, the fee must be in an amount equal to fifty-five percent of the annual permit fee in Section 102.5(2) for the permit being amended, not to exceed five thousand nine hundred fifty dollars.

102.6 RESERVED

102.7 RESERVED

102.8 RESERVED

102.9 RESERVED

102.10 RESERVED

102.11 RESERVED

102.12 RESERVED

102.13 RESERVED

102.14 RESERVED

102.15 RESERVED

102.16 RESERVED

102.17 RESERVED

102.18 RESERVED

102.19 RESERVED

102.20 RESERVED

102.21 RESERVED

102.22 RESERVED

102.23 RESERVED

102.24 RESERVED

102.25 RESERVED

102.26 RESERVED

102.27 RESERVED

102.28 RESERVED

102.29 RESERVED

102.30 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE, ADOPTED MONTH DAY, YEAR: EFFECTIVE MOTH DAY, YEAR

The provisions of Colorado Revised Statutes section 25-8-210 provides the specific statutory authority for setting fees by regulation. In compliance with Colorado Revised Statutes Section 24-4-103(4), the Commission has adopted the following Statement of Basis and Purpose.

BASIS AND PURPOSE

Section 25-8-210, C.R.S., directs the Commission that "on or before October 31, 2025, the Commission shall establish the following fees by rule:

(1) Drinking water fees assessed on public water systems pursuant to section 25-1.5-209 (1), as that section existed prior to its repeal on July 1, 2026.

(2) Commerce and industry sector permitting fees assessed pursuant to section 25-8-502 (1.1)(b), as that section existed prior to its repeal on July 1, 2026."

The Commission and Division have fulfilled the requirements of Section 25-8-210(1)(c)(II), C.R.S., as all permit holders and public water systems have been notified of the fee setting by rule stakeholder process. In addition, the Division's stakeholder process for this effort is well documented on its website. In addition, the fee increases for this rulemaking will not be phased in over time.

The Commission has determined that the fees for the drinking water cash fund and the clean water cash fund's commerce and industry fee payor type should be established in the rule as soon as practicable. Both funds generate significantly less than the revenue required to sustain the staffing and support necessary to provide the required services. These services are necessary to administer the Safe Drinking Water Act and Clean Water Act in Colorado. The legislature establishes the spending authority for these funds. The spending authority reflects the cost to operate the Division and increases through time to account for inflation in the cost of drinking water and clean water staff support and maintenance of the Division's general and administrative services for staff and the public. The Commission found that fee

increases are necessary as a component of the funding needed to maintain existing Division services for the drinking water program and commerce and industry fee payors. In addition, the Commission understands that the projected revenue for other Division cash funds is sufficient for state fiscal year 24-25 and that those funds do not require an increase during this rulemaking.

The drinking water fee increase resulted in fee increases ranging from $10 to $2,812 per year, or a 13 percent increase. The commerce and industry fee increase resulted in fee increases ranging from $16 to $4,136 per year, or a 13 percent increase. The Commission understands that these fee increases are not the total amount needed for the Division to maintain existing services and that the Division is exploring options to fill the gap so that the Division can maintain existing services. In addition, the Commission and Division understand that fee payors would like to have advance notice of fee increases for budget planning purposes and will strive to provide timely information that helps fee payors with budget planning.

The Commission recognizes that the Division has conducted outreach to obtain stakeholder input regarding the total funding for the Division, including federal money, money from the General Fund, and all cash fees, and that those efforts are ongoing per Section 25-8-210(2)(a). In addition, the Commission anticipates that the May 2025 fee-setting rulemaking will revisit decisions made as part of this rulemaking and will be more expansive to cover all of the Division's cash fees and meet the requirements outlined in Section 25-8-210, C.R.S.

Notice of Proposed Rulemaking

Tracking number

2023-00815

Department

1400 - Department of Early Childhood

Agency

1406 - Administrative Appeals

CCR number

8 CCR 1406-1

Rule title

ADMINISTRATIVE APPEALS RULES AND REGULATIONS

Rulemaking Hearing

Date

01/22/2024

Time

04:00 PM

Location

Webinar Only: https://us02web.zoom.us/meeting/register/tZIqc-yspj0uGtT5EP36wKEjltxdR1mb0z3Y

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Executive Director to consider adopting rules for the Colorado Department of Early Childhood's (CDEC) Administrative Appeals processes, to implement Colorado House Bill 22-1295. These rules currently exist within the Colorado Department of Human Services, and are being transferred/re-adopted by CDEC. The proposed rule revisions include: new rule numbering; updates to departmental, statutory, and cross-rule references; and provide a general cleanup to clarify the processes and rule language.

Statutory authority

Sections 26.5-1-105(1)(a), 26.5-2-105(5), 26.5-4-108(1)(a), 26.5-4-111(14), 26.5-5-314(6), 24-4-103, and 24-4-105, C.R.S.

Contact information

Name

Elena M. Kemp

Title

Rulemaking & Rules Advisory Council Administrator

Telephone

720-661-1657

Email

CDEC_Rulemaking@state.co.us

COLORADO DEPARTMENT OF EARLY CHILDHOOD~~HUMAN SERVICES~~

Administrative Appeals for the Colorado Department of Early Childhood~~Income Maintenance (Volume 3)~~

ADMINISTRATIVE APPEALS~~PROCEDURES~~ RULES AND REGULATIONS~~FOR THE COLORADO CHILD CARE ASSISTANCE PROGRAM~~

8~~9~~ CCR 1406-1~~2503-8~~

6.100 AUTHORITY

These rules are adopted pursuant to the rulemaking authority provided in sections 26.5-1-105(1)(a), 26.5-2-105(5), 26.5-4-108(1)(a), 26.5-4-111, and 26.5-5-314, C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 through 24-4-204 (APA), C.R.S., and the Anna Jo Garcia Haynes Early Childhood Act (Early Childhood Act), Title 26.5 of the C.R.S.

6.101 SCOPE AND PURPOSE

These rules govern the processes and procedures of administrative appeals for programs and services administered by the Colorado Department of Early Childhood including the County Dispute Resolution Process for the Colorado Child Care Assistance Program, Child Care Licensing determinations and decisions, and the oversight of Local Coordinating Organizations. For rules related to child care provider stringency appeals and materials and hardship waivers pursuant to sections 26.5-5-313 and 314, C.R.S., see rules located at 8 CCR 1402-1 in rule sections 2.114 - 2.118. For rules related to dispute resolutions for Colorado Shines ratings, see rules located at 8 CCR 1401-1 in rule section 1.207. For rules related to dispute resolutions for the Colorado Child Care Assistance Program, see rules located at 8 CCR 1403-1 in rule section 3.144. For rules related to dispute resolution and appeals of the Early Intervention Colorado Program, see rules located at 8 CCR 1405-1, rule sections 5.119 - 5.124.

6.102 APPLICABILITY

The provisions of these rules are applicable to all current or former recipients, applicants, licensees, and administrators of the programs and services administered by the Colorado Department of Early Childhood within the scope of these rules.

6.103 DEFINITIONS

A. “Administrative Law Judge” or “ALJ” means the same as described in section 24-30-1003, C.R.S.

B. "Appellant” means the person appealing a county department or Department decisions.

C. “Applicant” means the adult caretaker(s) or teen parent(s) who sign(s) the Colorado Child Care Assistance Program (CCCAP) application form and/or the redetermination form.

D. "County Department" means a county department of human or social services as defined by section 26.5-4-103(3), C.R.S.

E. "Colorado Child Care Assistance Program" (CCCAP) means the public assistance program for child care established in Part 1 of Article 4 of Title 26.5, C.R.S.

F. "County Dispute Resolution Process" means the dispute resolution process required by section 26.5-4-108(1)(a), C.R.S.

G. "Department" means the Colorado Department of Early Childhood (CDEC) created in section 26.5-1-104, C.R.S.

H. "Department Administrative Appeals Unit" references the unit within the Department that acts as the designee for the Executive Director in actions that are administratively appealed, including review of the Administrative Law Judge's Initial Decision, and entering Final Agency Decision affirming, modifying, reversing, or remanding the Initial Decision.

I. "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.

J.~~15~~ ~~"~~Good Cause~~"~~ includes, emergency conditions or circumstances beyond the control of the party seeking the modification such as, but not limited to, impossibility for a party to meet a specified deadline; incapacity of the party or representative; lack of proper notice of the availability of the appeal process; additional time required to obtain documents which were timely requested but not delivered; or other situations which would prevent a reasonable person from meeting a deadline or complying with the process without modification. Good cause does not include: excessive workload of either the party or his/her representative; a party obtaining legal representation in an untimely manner; failure to receive the Initial Decision when a party has failed to advise the Department Administrative Appeals Unit of a change of address or a correct address; or any other circumstance which was foreseeable or preventable.~~but is not limited to: death or incapacity of an applicant/recipient, or a member of his immediate family, or the representative; any other health or medical condition of an emergency nature; or, other circumstances beyond the control of the applicant/recipient, and which would prevent a reasonable person from making a timely request for a conference or postponement of a scheduled conference.~~

K. "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.

L. "Initial Decision" means the written decision rendered by the Administrative Law Judge pursuant to sections 24-4-105 and 26.5-1-107, C.R.S.

M. "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.

N. "Local Coordinating Organization" (LCO) means the entity selected by the Department pursuant to section 26.5-1-103(4), C.R.S.

O. "Office of Administrative Courts" (OAC) means the courts created in the Colorado Department of Personnel and Administration by section 24-30-1001(1), C.R.S.

P. Preponderance of Evidence means credible evidence that a claim is more likely true than not.

Q. "Recipient" means the same as in section 26.5-4-103(10), C.R.S.

R. "Timely Request" means a request for modification of a hearing or procedural deadline made no later than one (1) business day prior to the hearing date or deadline.

6.200 GENERAL RULES FOR AN APPEAL, INITIAL DECISIONS, AND FINAL AGENCY DECISIONS

A. This section applies to state-level appeals of:

1. County department decisions and Department actions concerning CCCAP benefits, including the result of a county dispute resolution conference and a county department's failure to act concerning benefits;

2. Department actions concerning child care licenses, including Department determinations to deny, suspend, or revoke a permanent license or to make a permanent license probationary; and

3. Department determinations concerning LCO applications and agreements, including application denials and termination of coordinating agreements.

6.201~~3.850.5~~ CONDUCT AND PROCEDURE OF ~~STATE~~ HEARINGS

A. The conduct and procedure of all hearings described in these rules are governed by the Office of Administrative Court's Procedural Rules found at 1 CCR 104-1 (Sept. 30, 2014), herein incorporated by reference, unless specified otherwise in these rules. No later editions or amendments are incorporated. These rules are available at no cost from the Department of Personnel and Administration, 1525 Sherman St., Denver, Colorado 80203 or at https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=5911&fileName=1%20CCR%20104-1. These rules are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Bldg. C, Denver, Colorado 80246.

B. When the Administrative Law Judge (ALJ) dismisses an appeal, the decision of the ALJ shall be an Initial Decision, which shall not be implemented pending review by the Department Administrative Appeals Unit and entry of a Final Agency Decision pursuant to section 26.5-1-107, C.R.S.

~~3.850.50 Conference telephonic hearings may be conducted unless otherwise requested by any of the parties, as an alternative to face-to-face hearings. All applicable provisions of the face-to-face hearings procedures will apply, such as the right to be represented by counsel, the right to examine and cross-examine witnesses, the right to examine the contents of the case file, and the right to have the hearing conducted at a reasonable time and date.~~

~~3.850.51 The administrative law judge shall conduct the hearings in accordance with the colorado administrative procedure act (section 24-4-105, c.r.s.).~~

~~3.850.52 The county department shall have the burden of proof, by a preponderance of the evidence, to establish the basis of the ruling being appealed. Every party to the proceeding shall have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing will be~~

expedited and the interests of the parties will not be subsequently prejudiced thereby, the administrative law judge may receive all or part of the evidence in written form or by oral stipulations.

3.850.6 PROCEDURE OF HEARING

3.850.61 PROCEDURE BEFORE ALJ

The following provisions govern the procedure at state hearings before the administrative law judge:

A. The hearing is private; however, any person or persons whom the appellant wishes to appear for him may be present, and, if requested by the appellant and in the record, such hearing may be public;

B. The purpose of the hearing is to determine the pertinent facts in order to arrive at a fair and equitable decision in accordance with the rules of the state department. In arriving at a decision, only the evidence and testimony introduced at the hearing is considered, except that the administrative law judge may permit the introduction of medical or other evidence after the hearing, provided the opposing party is also furnished a copy and is afforded the opportunity to controvert or otherwise respond to such evidence, in circumstances when it is shown, at the hearing, that such evidence could not, for good cause, be obtained in time for the hearing. Delays in rendering the initial decision will be charged to the party requesting the delay;

C. Although the hearing is conducted on an informal basis and an effort is made to place all the parties at ease, it is essential that the evidence be presented in an orderly manner so as to result in an adequate record;

D. A complete and exact record of the proceedings shall be made by electronic or other means. When required, the office of administrative courts shall cause the proceedings to be transcribed.

3.850.62 When the administrative law judge dismisses an appeal for reasons other than failure to appear, the decision of the administrative law judge shall be an initial decision, which shall not be implemented pending review by the office of appeals and entry of an agency decision.

3.850.63 The administrative law judge shall not enter a default against any party for failure to file a written answer in response to the notice of hearing, but shall base the initial decision upon the evidence introduced at the hearing. An appellant may be granted a postponement of the hearing, however, if the county department has failed to provide the statement required by section 3.850.42 and the appellant has therefore been unable to prepare for the hearing.

3.850.64

When an appellant fails to appear at a duly scheduled hearing, having been given proper notice, without having given timely advance notice to the administrative law judge of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and an order of dismissal shall be entered by the administrative law judge and served upon the parties by the office of administrative courts. The dismissal order shall not be implemented pending review by the office of appeals and entry of an agency decision.

The appellant, however, shall be afforded a ten-day period from the date the order of dismissal was mailed, during which the appellant may explain in a letter to the administrative law judge the reason for his/her failure to appear. If the administrative law judge then finds that there was acceptable good cause for the appellant not appearing, the administrative law judge shall vacate the order dismissing the appeal and reschedule another hearing date.

If the appellant does not submit a letter seeking to show good cause within the 10-day period, the order of dismissal shall be filed with the office of appeals of the state department. The office of appeals shall confirm the dismissal of the appeal by an agency decision, which shall be served upon the parties. The county department shall immediately carry out the necessary actions to provide assistance or services in the correct amount, to terminate assistance or services, to recover assistance incorrectly paid, and/or other appropriate actions in accordance with the rules.

If the appellant submits a letter seeking to show good cause and the administrative law judge finds that the stated facts do not constitute good cause, the administrative law judge shall enter an initial decision confirming the dismissal. The appellant may file exceptions to the initial decision pursuant to section 3.850.72, a.

3.850.65 INTERIM RELIEF (NOT APPLICABLE TO CHILD CARE ASSISTANCE PROGRAMS)

3.850.651

Upon written sworn application accompanied by appropriate financial statement, the appellant may, at any time prior to the hearing of an action concerning termination or reduction of assistance or services, apply for an agency order (the administrative law judge is designated as representing the agency in such matters) granting interim relief to prevent irreparable injury. The order, if made, shall continue in force until the final agency decision. The order shall contain a specific finding based upon evidence submitted to the administrative law judge that specified irreparable damage will result if the order is not granted. A copy of such decision shall be sent to the county department. In the event the final agency decision is against the appellant, recovery shall be considered for all funds expended under the order of interim relief subject to recovery rules.

3.850.652

The county department shall provide to the appellant the assistance or service specified in an agency order granting interim relief as soon as possible but not later than ten calendar days from the date of receipt of such order.

3.850.653

The appellant need not request interim relief if he/she is eligible for continued benefits pursuant to section 3.800.34 of this staff manual.

6.2023.850.7 DECISION AND NOTIFICATION

A.3.850.71 INITIAL DECISION

1. Following the conclusion of the hearing, the Administrative Law Judge (ALJ) shall promptly prepare and issue an Initial Decision within sixty (60) days, or as soon as possible. Once the ALJ issues the Initial Decision, the Office of Administrative Courts shall immediately deliver the Initial Decision toand file it with the Department Administrative Appeals UnitOffice of Appeals for determination of the Final Agency Decisionof the state department of human services.

2. The Initial Decision isshall make an initial determination on whether the county department,or state Department, or its agents acted in accordance with, and/or properly applied, the applicable statutes andinterpreted, the administrative rules of the state Department. The administrative law judge may determine whether statutes were properly interpreted and applied only when no implementing state rules or county department policy exist. The ALJadministrative law judge has no jurisdiction or authority to determine issues of constitutionality or legality of the Department'sal administrative rules.

3. The Initial Decision mustshall advise the applicant/recipientparties that failure to file exceptions to provisions of the Initial Decision will waive the right to seek judicial review of a Final Agency Decision which affirms those provisions.

4. The Department Administrative Appeals UnitOffice of Appeals shall promptly serve the Initial Decision upon each party by first class mail or by electronic mail, if the parties agree to electronic service within ten (10) calendar days of receiving the Initial Decision. This is the Notice of Initial Decision. The Department Administrative Appeals Unit, and shall transmit a copy of the Initial Decision to the division withinof the state Department thatwhich administers the program(s) pertinent to the appeal.

5. The Initial Decision shall not be implemented pending review by the Department Administrative Appeals UnitOffice of Appeals and entry of an Final Agency Decision.

B.3.850.72 REVIEW BY THE DEPARTMENT ADMINISTRATIVE OFFICE OF APPEALS UNIT

The Department Administrative Appeals UnitOffice of Appeals of the state Department, ais the designee of the Executive Director, and shall review the Initial Decision of the Administrative Law Judge (ALJ) and shall enter a Final Agency Decision affirming, modifying, reversing, or remanding the Initial Decision.

1. Procedure

a. Any party seeking an Final Agency Decision which reverses, modifies, or remands the Initial Decision of the ALJadministrative law judge mustshall file Exceptions to the Initial Decision with the state department, Department Administrative Appeals UnitOffice of Appeals, within fifteen (15) days (plus three days for mailing) from the date the Initial Decision wais mailed to the parties. Exceptions must state specific grounds for reversal, modification, or remand of the Initial Decision. The Department Administrative Appeals Unit cannot consider any arguments other than the issues raised in the appeal before the ALJ. The Department Administrative Appeals Unit cannot consider new evidence, which with reasonable diligence could have been produced at the time of the hearing or review.

b. If the Exceptions do not challenge the findings of fact, but instead assert only that the ALJadministrative law judge improperly interpreted or applied state administrative rules or statutes, the party filing Exceptions is not required to provide a transcript or recording to the Department Administrative Appeals UnitOffice of Appeals.

c. The Department Administrative Appeals Unit cannot consider any challenge to the facts unless a transcript and/or audio recording in lieu of a hearing transcript is provided.

d. The Department Administrative Appeals UnitOffice of Appeals shall serve a copy of the Exceptions on each party by first class mail or by electronic mail, if the

parties agree to electronic service. Each party has~~shall be limited to~~ ten (10) calendar days from the date Exceptions wea~~a~~re mailed to the parties ~~in which~~ to file a written response to ~~such~~ the Exceptions. The Department Administrative Appeals Unit~~Office of Appeals~~ shall not permit oral argument.

e. While review of the Initial Decision is pending before the Department Administrative Appeals Unit, the record on review, including any transcript or recording of testimony filed with the Department Administrative Appeals Unit, shall be available for examination by any party at the Department Administrative Appeals Unit during regular business hours.

f. For appeals of decisions related to CCCAP, the division(s) within the Department responsible for administering CCCAP may file Exceptions to the Initial Decision, or respond to Exceptions filed by a party, even though the division has not previously appeared as a party to the appeal. The division's exceptions or responses must be filed in compliance with the requirements of this rule section 6.202(B). Exceptions filed by the division that did not appear as a party at the hearing, shall be treated as requesting review of the Initial Decision upon the Department's own motion.

g~~C~~. In the absence of Exceptions filed by any party or by a division within~~of~~ the ~~state~~ d~~D~~epartment ~~of human services~~, the Department Administrative Appeals Unit~~Office of Appeals~~ shall review the Initial Decision, the Office of Administrative Court's hearing file, and if applicable, ~~and may review the hearing file of the administrative law judge and/or~~ the recorded testimony of witnesses, before entering a Final Agency Decision.

h. Review by the Department Administrative Appeals Unit~~Office of Appeals~~ will~~shall~~ determine whether the Initial Decision properly interpret~~ed~~s~~d~~ and applie~~d~~s~~d~~ the administrative rules of the ~~state~~ Department, or relevant statutes, and whether the findings of fact and conclusions of law support the decision. ~~If a party or division of the state department objects to the agency decision entered upon review by the Office of Appeals, the party or division may seek reconsideration pursuant to section 3.850.73, below.~~

i~~D~~. The Department Administrative Appeals Unit ~~Office of Appeals~~ shall serve~~mail~~ copies of the Final Agency Decision to all parties by first class mail or by electronic mail, if the parties agree to electronic service.

j~~E~~. ~~For purposes of requesting judicial review,~~ The effective date of the Final Agency Decision shall be the third (3rd) day after the date the Final Agency Decision~~decision~~ is mailed to the parties, even if the third (3rd) day falls on Saturday, Sunday, or a legal holiday. The Department Administrative Appeals Unit must~~parties shall be~~ advise~~d~~ the parties of the effective date of ~~this in~~ the Final Agency Decision.

k~~F~~. The Department~~state~~ or county department shall initiate action to comply with the Final Agency Decision within three (3) business~~working~~ days after the effective date of the Final Agency Decision. The Department shall comply with the Final Agency Decision~~decision~~ even if reconsideration is requested, unless the effective date of the Final Agency Decision is postponed by order of the Department Administrative Appeals Unit~~Office of Appeals~~ or a reviewing court.

l. The Final Agency Decision must notify the parties of their right to seek judicial review pursuant to section 24-4-106, C.R.S.

If the party asserts that the administrative law judge's findings of fact are not supported by the weight of the evidence, the party shall simultaneously with or prior to the filing of exceptions request the Office of Administrative Courts to cause a transcript of all or a portion of the hearing to be prepared and filed with the Office of Appeals. The exceptions shall state that a transcript has been requested, if applicable. Within 5 days of the request for transcript, the party requesting it shall advance the cost therefore to the transcriber designated by the Office of Administrative Courts unless prior payment is waived by the transcriber.

The Office of Appeals shall not consider evidence which was not part of the record before the administrative law judge. However, the case may be remanded to the administrative law judge for rehearing if a party establishes in its exceptions that material evidence has been discovered which the party could not with reasonable diligence have produced at the hearing.

B. The division(s) of the state department responsible for administering the program(s) relevant to the appeal may file exceptions to the Initial Decision, or respond to exceptions filed by a party, even though the division has not previously appeared as a party to the appeal. The division's exceptions or responses must be filed in compliance with the requirements of 3.850.72, a, above. Exceptions filed by a division that did not appear as a party at the hearing shall be treated as requesting review of the Initial Decision upon the state department's own motion.

2. Transcripts

a. The party filing Exceptions challenging the ALJ's findings of fact is responsible for obtaining a transcript unless they file for permission to file an audio recording (see rule subsection 3, below).

b. To obtain a transcript, a party must:

1) request the audio recording of the hearing from the Office of Administrative Courts;

2) pay for a transcriptionist of their choosing to transcribe the audio recording into a transcript; and

3) file the transcript by the due date for filing Exceptions.

c. Transcripts must be filed with a party's Exceptions. A party may request additional time for filing Exceptions in order to obtain the transcript. Any transcript received by the Department Administrative Appeals Unit after the due date for filing Exceptions stated in the Notice of Initial Decision or the deadline imposed by the Department Administrative Appeals Unit if a request for extension of time was granted, will not be considered.A party who is unable because of indigency to pay the cost of a transcript may file a written request, which need not be sworn, with the Office of Appeals for permission to submit a copy of the hearing recording instead of the transcript. If submission of a recording is permitted, the party filing exceptions must promptly request a copy of the recording from the Office of Administrative Courts and deliver it to the Office of Appeals. Payment in advance shall be required for the preparation of a copy of the recording.

~~While review of the Initial Decision is pending before the Office of Appeals, the record on review, including any transcript or recording of testimony filed with the office of appeals, shall be available for examination by any party at the Office of Appeals during regular business hours.~~

3. Audio Recording

a. If a party cannot afford a transcript, the party may request permission to file an audio recording. The request must be filed in writing with the Department Administrative Appeals Unit prior to the due date for filing Exceptions, and include:

1) An explanation as to why they cannot afford a transcript; and

2) Why it is essential for the Department Administrative Appeals Unit to listen to testimony of a specific witness or witnesses.

b. A County Department's request to submit an audio recording instead of a transcript must state that funds are not available in the county department's operating budget to pay for preparation of a transcript and the request must be certified by the county department director.

c. Any submission of an audio recording without first obtaining permission from the Department Administrative Appeals Unit will not be considered.

d. The requesting party is solely responsible for requesting the copy of the audio recording from the Office of Administrative Courts and for filing the audio recording with the Department Administrative Appeals Unit by the due date provided in the Notice of Initial Decision unless an extension of time has been granted by the Department Administrative Appeals Unit.

6.203~~3.850.73~~ RECONSIDERATION OF FINAL AGENCY DECISION

A. A motion for reconsideration of a Final Agency Decision may be granted by the Department Administrative Appeals Unit~~Office of Appeals~~ only for the following reasons:

1~~A~~. ~~Upon~~ A showing of good cause for failure to file Exceptions to the Initial Decision within the fifteen (15) (plus three days for mailing) day period allowed by rule section 6.202(B)(1)(a)~~3.850.72, a~~; or

2~~B~~. Upon a showing that the Final Agency Decision is based upon a clear or plain error of fact or law. An error of law means failure by the Department Administrative Appeals Unit~~Office of Appeals~~ to follow a rule, statute, or court decision which controls the outcome of the appeal.

3. No motion for reconsideration shall be granted unless it is filed in writing with the Department Administrative Appeals Unit~~Office of Appeals~~ within fifteen (15) days of the date that the Final Agency Decision is mailed to the parties. The motion must state specific grounds for reconsideration of the Final Agency Decision.

4. The Department Administrative Appeals Unit~~Office of Appeals~~ shall serve~~mail~~ a copy of the motion for reconsideration to each party of record and ~~to the~~ appropriate division of the ~~state~~ Department via first class mail or by electronic mail, if the parties agree to electronic service.

B.~~3.850.74~~

For the Colorado Child Care Assistance Program (CCCAP) appeals, when an appeal results in a Final Agency Decision that ~~an action of~~ the county department or ~~state~~ Department was not in accordance with administrative rules of the Department, or when the county department or ~~state~~ Department so determines after a request for a hearing is made, the CCCAP adjustment or corrective payment is made retroactively to the date of the incorrect action.

~~3.850.75~~

~~The applicant/recipient is to be fully informed by the final agency decision of his further right to apply for judicial review of the agency decision by the filing of an action for review in the appropriate state district court. Any such action must be filed in accordance with the rules of civil procedure for courts of record in Colorado within thirty-five (35) days after the final agency decision becomes effective.~~

~~3.850.76~~

~~The state department will establish and maintain a method for informing, in summary and depersonalized form, all county departments and other interested persons concerning the issues raised and decisions made on appeals.~~

~~3.850.77~~

~~The executive director or designee shall have the power to enter declaratory orders. The executive director or designee may, in his/her discretion, entertain and promptly dispose of petitions for declaratory orders to terminate controversies and/or remove uncertainties as to the applicability to the petitioners of any statutory provisions or of any rule. The order of the executive director or designee disposing of the petition shall constitute final agency action subject to judicial review.~~

6.300~~3.840~~ COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP COUNTY DEPARTMENT DISPUTE RESOLUTION PROCESS AND APPEALS

~~In order~~ To resolve disputes between county departments ~~of social services~~ or the service delivery agency and CCCAP applicants or ~~/~~recipients, county departments shall adopt procedures for the resolution of disputes consistent with this section. The procedures shall be designed to establish a simple non-adversarial format for the informal resolution of CCCAP disputes.

6.301~~3.840.1~~ OPPORTUNITY FOR CONFERENCE

A.~~11~~ Before the county department or local service delivery agency~~, prior to~~ takesing a negative action such as ~~to~~ deniesy, terminates, recovers, or modifies a CCCAP benefit, it ~~initiate vendor payments or modify financial assistance or public assistance, to an applicant or recipient,~~ shall~~, at a minimum,~~ provide an ~~the individual~~ opportunity for a county dispute resolution conference in writing and in accordance with the "Timely Written Noticing" requirement outlined in 8 CCR 1403-1 rule section 3.103(CCCCC).

B.~~3.840.12~~

The county department or local service delivery agency must provide the applicant/recipient with notice of the applicant/recipient's right to the county dispute resolution conference. The notice must provide that:

1. The applicant/recipient must request a county dispute resolution conference prior to the effective date of the suspension, termination, or modification of the CCCAP benefit as provided on the written notice;

2.~~14~~ Failure of the applicant/recipient to request a county dispute resolution conference prior to the effective date provided on the written notice~~local conference within the prior notice period~~, or failure to appear at the time of the scheduled conference without making a timely request for postponement, ~~shall~~ constitute~~s~~ abandonment of the right to a conference, unless the applicant/recipient can show good cause for ~~his~~ failure to appear.

3. ~~The right of an individual to a local conference is primarily to assure that the proposed action is valid, to protect the person against an erroneous action concerning benefits, and to assure reasonable promptness of county action. The individual may choose, however, to~~ The applicant/recipient may bypass the county dispute resolution process~~process~~ and appeal directly to the state Office of Administrative Courts, pursuant to ~~the~~ section 24-4-105(2), C.R.S., and as described below in rule section 6.304.~~on appeal and state hearing.~~

C. If the applicant/recipient requests a county dispute resolution conference prior to the effective date of the suspension, termination, or modification of the CCCAP benefit as provided on the written notice, the county department or local service delivery agency must provide notice to the applicant/recipient of the scheduled date, time and location or log-in information for the conference. Notice should be in writing; however, verbal notice may also be given in addition to the written notice to facilitate the dispute resolution process.

~~13 The applicant/recipient is entitled to:~~

~~B. privileged communications with the exception of names of confidential informants, privileged communications between the county department and its attorney, and the nature and status of pending criminal prosecutions, examine the contents of the case file and all documents and records used by the county department or agency in making its decision at a reasonable time before the conference and~~s ~~as well as during the conference;~~

~~C. present new information or documentation to support reversal or modification of the proposed adverse action;~~

6.302~~3.840.2~~ CONDUCT OF COUNTY DISPUTE RESOLUTION CONFERENCE

A. Upon request, the county department or local service delivery agency must provide or allow access to the contents of the case file and all documents and records used by the county department or local service delivery agency in making its decision with the exception of names of confidential informants; privileged communications between the county department and its attorney; and the nature and status of pending criminal prosecutions. The county department must provide these documents or records within thirty (30) days of the request.

B.~~21~~ The county dispute resolution conference must~~local dispute resolution conference shall~~ be held in the county department and would include the local service delivery~~or~~ agency where the proposed decision is pending, before a person who was not directly involved in the initial determination of the action in question. The county may conduct the county dispute resolution conference virtually if the technology is available to both the county and the applicant/recipient. The individual who initiated the action in dispute shall not conduct the county dispute ~~local level dispute~~ resolution conference.

C.~~22~~ The individual ~~person~~ designated to conduct the conference must have~~shall be in a position which, based on~~ knowledge, experience, and training, ~~would enable him~~ to determine if the proposed action is valid.

D.~~23~~ Two (2) or more county departments~~/service delivery agencies~~ may establish a joint dispute resolution process. If two (2) or more counties~~/service delivery agencies~~ establish a joint process, the location of the conference need not be held in the county department ~~or agency~~ taking the action, but the conference location must be easily accessible~~shall be convenient~~ to the applicant/recipient.

E.~~24~~ The county dispute resolution~~local level~~ level conference may be conducted ~~either in person, or~~ by telephone, or virtually, if the applicant/recipient agrees to~~.~~ a telephonic or virtual conference.~~ must be agreed to by the applicant/recipient.~~

F.~~25~~ The individual ~~county/agency caseworker or other person~~ who initiated the action in dispute, or another person familiar with the case, shall attend the county dispute resolution~~local level~~ conference and present the factual basis for the disputed action.

G~~A~~. The applicant/recipient may represent themselves or may be represented by ~~an authorized representative, such as~~ legal counsel, a relative, friend, or other spokesman. Representation by a nonlawyer in this circumstance does not constitute the practice of law.~~, or the may represent himself;~~

H.~~26~~ The county dispute resolution~~local level dispute resolution~~ conference must~~shall~~ be conducted on an informal basis. The county department must make every effort ~~is to be made~~ to ensure~~assure~~ that the applicant/recipient understands the county department~~/agency~~'s specific reasons for the disputed~~proposed~~ action.~~, and the applicable state department's rules, or county policy. If~~ ~~In the event~~ the applicant/recipient requests an interpreter~~does not speak English~~, the county department shall provide an interpreter for the county dispute resolution conference ~~shall be provided by the county department/agency~~.

I.~~27~~ The county department~~/agency~~ shall have ~~available at the conference~~ all documents and records in the case file described in rule section 6.302(A) available at the conference~~pertinent to the specific action in dispute~~.

J. The applicant/recipient must be allowed to present information or documentation to support their position.

K.~~3.840.28~~ To the extent possible, the county~~local~~ dispute resolution conference must~~shall~~ be scheduled and conducted prior to the effective date of ~~within the prior notice period. If the county department cannot conduct the conference within this period, for whatever reason, the adverse action~~the suspension, termination, or modification of the CCCAP benefit as provided on the written notice. If the county department cannot conduct the county dispute resolution conference prior to suspension, termination, or modification of the CCCAP benefit, ~~must~~shall be delayed and benefits must be continued until such conference can be held, unless the individual waives continued benefits~~ are waived by the individual~~.~~The county department/local service agency shall provide reasonable notice to the individual of the scheduled date, time and location for the conference, or the date, time and call-in telephone number of the scheduled telephone conference. Notice should be in writing, however, verbal notice may be given to facilitate the dispute resolution process.~~

L.~~3.840.29~~ The county department may consolidate disputes with any other public assistance program if the facts are similar and consolidation will facilitate resolution of all disputes.

M. Failure to appear at the time of the scheduled county dispute resolution conference without making a timely request for postponement constitutes abandonment of the right to a county dispute resolution conference unless the applicant/recipient can show good cause for their failure to appear.

6.3033.840.3 NOTICE OF COUNTY DEPARTMENT DISPUTE RESOLUTION CONFERENCE DECISION

A. If~~n the event~~ the dispute is not resolved through the county dispute resolution conference, the person conducting the county dispute resolution conference~~presiding~~ shall prepare a written statement indicating that the dispute was not resolved. The statement~~decision~~ must be issued within ten (10) calendar days of the county dispute resolution conference and ~~shall~~ include an ~~statement~~ explanation~~ining~~ of the applicant~~/ or~~ recipient's right to request an appeal ~~state level fair hearing~~ before an Administrative Law Judge~~;~~, the time limit for requesting an appeal ~~state level~~ hearing, ~~and~~ if appropriate, a statement that applicable benefits will continue pending a final state decision if appealed to the state within ten (10) calendar days from the date of the statement~~conference decision~~.

1. To appeal a written statement, the applicant/recipient must submit a written request that is mailed within ten (10) calendar days of the date the county dispute resolution conference decision was mailed to the applicant/recipient in order to receive continued benefits pending state appeal. Continued benefits will be recovered by the county department as a client error pursuant to rule section 3.145 located in 8 CCR 1403-1, if the Final Agency Decision confirms that the applicant/recipient was not eligible.

B. If the parties reach an agreement at the county dispute resolution conference~~At the conclusion of the conference~~, the person who conducted~~presiding~~ the county dispute resolution conference shall ~~have~~reduce the agreement ~~entered into by the parties reduced~~ to writing. T~~Such agreement shall be signed by t~~he parties ~~and/~~or their representatives ~~and~~ shall sign the agreement. The agreement will be binding upon the parties. The county department must immediately provide the applicant/recipient with a copy of the written decision. ~~shall immediately be provided to the applicant/recipient and/or his representative.~~ If the conference is held by telephone or through virtual means, the agreement need only be signed by the person who conducted the county dispute resolution conference~~presiding~~. The county department must ~~A copy of the agreement will be promptly~~ mail~~ed~~ or deliver~~ed~~ the agreement to the other party(s) within one (1) business day after the county dispute resolution conference.

~~3.840.31~~6.304~~3.850~~ COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP) APPEAL ~~AND STATE LEVEL FAIR HEARING~~

~~3.850.1 APPEAL AND STATE LEVEL FAIR HEARING~~

A.~~3.850.12~~ The applicant/recipient is entitled to an appeal at the Office of Administrative Courts for the following circumstances~~Requests for state hearings may result from such reasons as~~:

1~~A~~. The applicant/recipient's CCCAP ~~opportunity to make~~ application or reapplication has been denied.~~;~~

2~~B~~. The applicant/recipient's CCCAP~~An~~ application ~~for assistance or services~~ has not been acted upon within fifteen (15) calendar days~~the maximum time period for the category of assistance.~~~~;~~

3~~C~~. The CCCAP ~~application for assistance has been denied, the~~ benefit has been modified or discontinued, ~~vendor payments have been initiated,~~ the requested reconsideration o~~f~~r a

CCCAP benefit amount deemed incorrect has been refused or delayed through the withholding of authorization, payment has been delayed through the holding of payments, the county department is demanding repayment for any part of an award fromto a recipient or former recipient which the recipient does not believe is justified, or the applicant/ or recipient disagrees with the type or level of benefits or services provided, or the parent fee calculation.

B. The county department has the burden of proof, by a preponderance of the evidence, to establish the basis of the decision being appealed. Every party to the proceeding has the right to present their case or defense through testimony and evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be subsequently prejudiced thereby, the Administrative Law Judge may receive all or part of the evidence in written form or by oral stipulations.

C. The hearing is closed to the public; however, any person or persons whom the applicant/recipient wishes to appear on their behalf in accordance with rule section 6.302(G) may be present, and, if requested by the applicant/recipient and in the record, such hearing may be public.

D. If an appellant fails to appear at a duly scheduled hearing, having been given proper notice in accordance with 1 CCR 104-1, Rule 4, without having given timely advance notice to the Administrative Law Judge of good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and an Order to Show Cause shall be entered by the Administrative Law Judge and served upon the parties by the Office of Administrative Courts. The Order to Show Cause shall not be implemented pending review by the Department Administrative Appeals Unit and entry of a Final Agency Decision.

1. The applicant/recipient must be afforded a ten (10) day period from the date the Order to Show Cause was mailed or delivered, during which the applicant/recipient may explain in writing to the Administrative Law Judge the reason for failure to appear.

a) If the Administrative Law Judge finds that there was good cause for the applicant/recipient not appearing, the Administrative Law Judge shall reschedule another hearing date.

b) If the applicant/recipient submits in writing seeking to show good cause and the Administrative Law Judge finds that the stated facts do not constitute good cause, or if the applicant/recipient does not submit a letter seeking to show good cause within the ten (10) day period, the Administrative Law Judge shall enter an Initial Decision dismissing the appeal.

2. The appellant may file exceptions to the Initial Decision pursuant to rule section 6.202(B)(1)(a).

3. After considering the record and any exceptions filed, the Department Administrative Appeals Unit shall issue a Final Agency Decision that confirms or reverses the dismissal, which shall be served upon the parties.

a) If the dismissal is confirmed, the county department shall immediately carry out the necessary actions to provide assistance or services in the correct amount, to terminate assistance or services, to recover assistance incorrectly paid, and/or other appropriate actions in accordance with the rules. An applicant/recipient has the right to appeal a Final Agency Decision confirming the dismissal through the judicial review process as outlined in section 24-4-106, C.R.S.

b) If the dismissal is reversed, the case shall be remanded back to the Office of Administrative Courts for further proceedings, if necessary.

E. The Administrative Law Judge shall not enter a default against an applicant/recipient for failure to file a written answer in response to the notice of violation and voluntary wavier of hearing but shall base the Initial Decision upon the evidence introduced at the hearing, assuming the applicant/recipient appears for the hearing.3.850.11

These rules apply to all state-level appeals of county department actions concerning child care assistance and benefits, social services, medical assistance eligibility, child welfare services, adult protective services, and child care, unless such actions have appeals procedures explicitly specified elsewhere in department rules/regulations. An affected individual who is dissatisfied with a county department action or the result of a county dispute resolution conference or failure to act concerning benefits may appeal to the Ooffice of Aadministrative Ccourts for a fair hearing before an administrative law judge. This will be a full evidentiary hearing of all relevant and pertinent facts to review the decision of the county department. The time limitations for submitting a request for an appeal are:

A. When the individual elects to avail thehimself of a county dispute resolution conference, but is dissatisfied with that decision, the request must be submitted in writing and mailed or delivered within ten (10) calendar days of the date the county dispute resolution conference decision was mailed or delivered to the applicant or recipient in order to receive continued benefits pending state appeal; otherwise, the ninety (90) day period specified in b, below, applies;

B. When the individual elects not to avail himself of a county dispute resolution conference but wishes to appeal directly to the state, a written request for an appeal must be mailed or delivered not later than 90 calendar days from the date prior notice of the proposed action was mailed to the person;

C. A request for an appeal must be mailed or delivered to the office of administrative courts.

3.850.13 the basic objectives and purposes of the appeal and state hearing process are:

A. To safeguard the interests of the individual applicant or recipient;

B. To provide a practical means by which the applicant or recipient is afforded a protection against incorrect action on the part of the representatives of the state or county departments;

C. To bring to the attention of the state department and county department information which may indicate need for clarification or revision of state and county policies and procedures;

D. To assure equitable treatment through the administrative process without resort to legal action in the courts.

3.850.14 Any clear expression in writing by the individual, or someone legally authorized to act on their behalffor him, that they wants an opportunity to have a specific action of a county department reviewed by the Dstate department is considered an appeal and a request for a hearing. The county department shall, when asked, aid the person in preparation of a request for a hearing. If the request for a hearing is made orally, the county department shall immediately prepare a written request for the individual's signature or have the recipient prepare such request, specifying the action on which the request is based and the reason for appealing that action.

3.850.15 The appellant, applicant/recipient is entitled to:

1A. Be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or they may represent themselveshimself;

2B. With the exception of the names of confidential informants, privileged communications between the county departments and its attorney, and the nature and status of pending criminal prosecutions, examine the complete case file and any other documents, records, or pertinent material to be used by the county at the hearing, at a reasonable time before the date of hearing and during the hearing.

3.850.16 The applicant/recipient, staff of the county department, and staff of the state department are entitled to:

A. Present witnesses;

B. Establish all pertinent facts and circumstances;

C. Advance any arguments without undue interference;

D. Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

3.850.2 AUTHORITY AND DUTIES OF STATE ADMINISTRATIVE LAW JUDGE

3.850.21 [REV. EFF. 9/15/12]

One or more persons from the state department of general support services/personnel, office of administrative courts, are appointed to serve as administrative law judges for the state department of human services.

.22 The state administrative law judge shall, prior to the hearing, review the reasons for the decision under appeal and be prepared to interpret applicable departmental rules and/or official written county policies pertaining to the issue under appeal in preparation for conduct of the hearing.

.23 For purposes of these rules, the terms "official written county policies governing the program area" or "county policies" are policies or amendments which have been formally adopted by the county board of commissioners in that county, subject to the requirements of state rules, state law, federal regulations, and federal law. Such policies include county plan submittals required by the state department.

The county shall forward copies of its policies and any subsequent amendments, including effective dates, to the state department and to the office of appeals. Individuals appealing a county action shall be provided reasonable opportunity to examine the county's policies.

.24 When the applicant/recipient and/or the department are not represented by legal counsel, the administrative law judge shall assist in bringing forth all relevant evidence and issues relating to the appeal. This will include granting the right of either party to submit pertinent questions to the other pursuant to appropriate rules of civil procedure.

6.3053.850.4 COUNTY DEPARTMENT RESPONSIBILITIES FOR A CCCAP APPEAL

A.3.850.41

When the applicant/recipient has had a countylocal dispute resolution conference and wishes to appeal the county department's decision to the Office of Administrative Courts for a hearing, the county department must following the below procedures are to be followed:

1A. As part of the local conference the applicant or recipient is informed that if he wishes to appeal to the office of administrative courts for a hearing, the county department will Assist him in providing materialsorganizing the facts supporting the applicant/recipient'shis claim, if the applicant/recipient so desires;, and that he may have

2. Provide the applicant/recipient with the opportunity to examine materials as described in rulethe section 6.202(A)concerning opportunity for state level fair hearing;

3B. The county will Forward a copy of the decision and a copy of the written notification given to the applicant/recipient of the proposed adverse action and a copy of the county dispute resolution conference decision to the Office of Administrative Courts.

B.3.850.42

IfWhen the applicant/recipient bypasses the county dispute resolution conference and makes his/her appeals directly to the Office of Administrative Courts, the applicant/recipient or the county department must deliver a written request for a CCCAP appeal no later than ninety (90) calendar days from the date the county department mailed prior notice of the proposed action to the applicant/recipient via postal service, e-mail or other electronic systems, fax, or hand-delivery. After the Office of Administrative Courts receives the appeal request, it will forward a copy of the notice to the applicant/recipientappellant setting a date for the hearing is forwarded to the county department. Upon receipt by the county department, the county department shall prepares and mails a letter to the applicant/recipientappellant with a copy to the Office of Administrative Courts, no later than five (5) business days prior to the hearing, which providesgiving the following information:

1A. The reasons for the county department decision of the county department and a specific explanation of each factor involved, such as the amount of excess property or income, assignment or transfer of property, residence factors, and service needs;

2B. The specific state administrative rules and/or the official written county department policy(s) on which the decision is based, and numeric reference to each such rule, including the appropriate Code of Colorado Regulations (CCR) citationses;

3C. Notice that the county department will assist the applicant/recipienthim/her in providing materialsorganizing the facts supporting the applicant/recipient'shis/her claim, if s/he so desireds; and, and

4. Notice that the applicant/recipients/he may have has the opportunity to examine regulations and other materials described in rule section 6.302(A),to be used at the hearing concerning the basis of the county decision.

C.3.850.43

Any clear expression orally or in writing by the applicant/recipient, or someone described in rule section 6.302(G) that the applicant/recipient legally authorized to act on their behalf, that they want an opportunity to have a specific action, as defined by rule section 6.304(A), a countde their CCCAP appliais considered an appeal and a request for a hearing. If th request for an appeal and hearing is made orally, the county department shall immediately prepare a written request for the individual's signature or have the recipient prepare such request, specifying the action taken by the county department on which the request is based and the reason for appealing that action.

D. If the appellant indicates that s/he desires To withdraw anhis/her appeal, the applicant/recipient must submit a statement to that effect shall be obtained from him/her in writing and forwarded to the Office of Administrative Courts. The county department shall also advise the Office of

Administrative Courts by telephone, as soon as it is ascertained that the appeal has been withdrawn and that the appellant will not attend the hearing.

E.3.850.44

If the applicant/recipientan individual who files an appeal is to be represented by legal counsel, a relative, friend, or other spokespersonrepresentative, at the pending hearing, the county department mustwill not discuss with the individual the merits of the appeal or the question of whether or not to proceed with the appealit outside unless in the presence of, or without the permission of, such legal counsel, relative, friend, or such other spokespersondesignated representative.

F.3.850.45

If the county department learns that the applicant/ or recipient will be represented by legal counsel, the county department shall make every effort to einsure that it too is represented by an attorney at the hearing. The county department may be represented by an attorney in any other appeal that it considers such representation desirable.

G.3.850.46

If the applicant/recipientappellant has a language difficulty, the county department shall arrange to have present at the hearing a qualified interpreter who will be sworn to translate correctly.

H.3.850.47

The fact that an appellant and the county department have been notified that a hearing will be held does not prevent the county department mayfrom reviewing the case and considering any new factors which might change the status of the case at any time prior to the hearing, includingtaking such action as may be indicated to reversinge its decision or otherwise settlinge the issue. The county department must immediately report any change which eliminatesresults in a voiding of the cause of appeal shall be immediately reported the need for a hearing to the Office of Administrative Courts by telephone or in writing.

I.3.850.48

Upon receipt of notice of a state hearing on an appeal, The county department shall arrange for a suitable hearing room appropriate to accommodate the number of persons, including witnesses, who are expected to be in attendance, taking into consideration such factors as privacy; whether the hearing is being held virtually absence of distracting noise; need for tables, chairs, electrical outlets, adequate lighting and ventilation, and conference telephone facilities.

6.3063.850.3 STATE RESPONSIBILITIES FOR A CCCAP APPEAL

A.3.850.31 The Department is responsible for notifying the Office of Administrative Courts (OAC) of all requests for appeals that the Department receives.

B. Upon receipt by the Office of Administrative Courts of an appeal request, the Office of Administrative Courts willit is assigned the appeal a case number and cause the appeal to be set for hearing through a setting conference.

C. At the setting conference, the Office of Administrative Courts will set a hearing date is set at least thirty (30)ten (10) days in advance., and a letter The Office of Administrative Courts will send a hearing notice by first class mail or electroniccertified mail, depending on the preferences of the

applicant/recipient, to the applicant/recipient ~~is sent to the appellant~~ and the county department notifying them of the date, time, and place of the hearing.

D. The Office Administrative Courts must inform the applicant/recipient appealing the county decision (appellant) that if the date, time, and/or place of the hearing is ~~told that if these arrangements are~~ not satisfactory, they must~~to~~ notify the Office of Administrative Courts and, if good cause ~~therefore~~ exists, the Office of Administrative Courts will consider~~ation will be given to~~ changing the date, time, and/or place of the hearing~~them~~.

E. The Office of Administrative Courts will provide an information sheet to the appellant with the hearing notice~~shall be enclosed~~ to explain the hearing procedures to the appellant. The information sheet must inform the appellant that:

1. They ~~appellant is informed of his~~have the right to seek legal representation.~~,~~

2. Before and during the hearing, the appellant or the appellant's ~~that he or his~~ representative has the right to examine all materials to be used at the hearing~~, before and during the hearing~~. Information which the appellant or the appellant's~~his~~ representative does not have an opportunity to see before or after the hearing shall not be made a part of the hearing record or used in a decision on an appeal. No material made available for review by the Administrative Law Judge may be withheld from review by the appellant or the appellant's~~his~~ representative.

3. ~~The appellant also is informed that~~ Failure to appear at the hearing as scheduled, without having secured a proper extension in advance, or without having shown good cause for failure to appear, shall constitute abandonment of the appeal and cause the appeal to be~~a~~ dismissed~~al thereof~~. See rule section 6.304(D), above.

F. Initial Decisions:

1. The Office of Administrative Courts Administrative Law Judge must issue a written Initial Decision of law in every appeal.

2. The Office of Administrative Courts must include copies of all exhibits, pleadings, applications, evidence, exhibits, and other papers used to inform the Initial Decision, with the Initial Decision for the Final Agency Decision.

3.~~.32~~ ~~In assistance payments and medical assistance eligibility appeals,~~ The Administrative Law Judge has twenty (20) days from the ~~hearing~~ date the hearing record closed to issue~~to arrive at~~ an Initial Decision.

4. The Initial Decision shall not be implemented pending review by the Department Administrative Appeals Unit~~Office of Appeals~~ and entry of a Final Agency Decision.

G. The Department's Administrative Appeals Unit must issue a Final Agency Decision in every appeal. All Final Agency Decisions on CCCAP~~these~~ appeals shall be made within ninety (90) days from the date of the request for hearing wa~~i~~s received.

~~.33 In all other appeals, the administrative law judge shall arrive at an initial decision (which is not to be implemented) within a reasonable timeframe. All final agency decisions on those matters shall also be made within a reasonable period of time.~~

~~.34 Once the initial decision has been made, it shall immediately be delivered to the state department of human services, office of appeals, for determination of the final agency decision.~~

6.307~~3.850.8~~ GROUP HEARINGS AND EXCEPTIONS

A.~~.81~~ When more than one~~a number of~~ (1) individual requests for hearing are received and if the sole issue involved pertains to~~is one of~~ state or federal law or changes in state or federal law, a single group hearing may be conducted. ~~In all group hearings, the policies governing hearings must be followed.~~ Each applicant/recipient~~individual~~ shall be permitted to present their~~his~~ own case or be represented by legal counsel of their choice, or a relative, friend, or other spokesperson. Each applicant/recipient ~~his authorized representative and~~ is entitled to receive a copy of the written decision.

B.~~.82~~ A hearing shall not be granted when either state or federal law requires an automatic benefit adjustment for classes of applicants/recipients unless the sole reason for an individual appeal is incorrect benefit computation. Furthermore, a hearing shall not be granted when either state or federal law requires or results in a reduction or deletion of a benefit.

C.~~.83~~ Unless the applicant/recipient has properly designated ~~as~~ an individual to represent them~~ative of an individual~~, a provider of assistance, or any other provider of goods and services to applicants/~~or~~ recipients, shall not be granted a hearing concerning an alleged adverse action to an ~~applican~~applicant/~~t or~~ recipient~~s~~.

6.400 CHILD CARE LICENSING PROGRAM APPEALS

6.401~~3.850.9~~ NEGATIVE LICENSING ACTION APPEALS ~~PROVIDER APPEALS~~

A. In the case of a petition by the Department or an appeal by a license~~e~~ or an applicant~~d~~ for a license, for an issue related to license status~~or certified provider or vendor of services of an adverse action by a county department or the state department related to provider status, rates, or purchased services~~, the decision of the Administrative Law Judge is an Initial Decision subject to~~a final agency decision and is not subject to state~~ Department review or modification. The Department will review the Initial Decision and issue a Final Agency Decision. The Final Agency Decision ~~The decision of the Administrative Law Judge~~ is subject to judicial review, pursuant to sections 24-4-106 and 26.5-1-107~~26-1-106~~, C.R.S.

B. The licensing appeal process may be initiated by the licensee/applicant, their legal representative, or by the Department. The licensee/applicant need not hire an attorney to appeal the licensing decision unless required by section 13-1-127, C.R.S.

6.402 APPLICATION DENIAL OR DENIAL OF A RENEWAL

A. The Department can deny an application for a child care license or deny an application for renewal of a child care license for the reasons stated in section 26.5-5-317(2), C.R.S.

B. When the Department denies a child care licensing application or decides not to renew an existing license, it must notify the applicant or licensee in writing of the decision. The decision letter must be mailed by certified mail to the applicant or licensee at the address listed on the application or renewal form.

C. An applicant who is denied a license or a licensee whose application for renewal is denied has the right to appeal the agency decision. To appeal the decision, the applicant or licensee must request a hearing in writing by sending a request to the Department within thirty (30) calendar days of receiving the decision letter.

D. The burden of proof is on the applicant or licensee to show why they are entitled to a license or renewed license.

E. After receiving a request for hearing, the Department shall initiate a case in the Office of Administrative Courts (OAC) and cause a Notice of Duty to Answer and Notice of Charges (Notice of Charges) to be filed with the Office of Administrative Courts. The Notice of Charges must assert the grounds for denying the applicant's license application or failing to renew a licensee's license. The Department must serve the Notice of Charges on the applicant/licensee (appellant) consistent with the Office of Administrative Court's procedures, as incorporated by reference in rule section 6.201(A).

F. The appellant must respond to the Notice of Charges within thirty (30) days of service or mailing of the Notice of Charges. If the appellant fails to respond, the Office of Administrative Courts Administrative Law Judge may enter a Default Judgment affirming the Department's decision regarding the application or renewal.

G. All hearings regarding the denial of a license or decision not to renew an existing license must be conducted in accordance with sections 24-4-104 and 24-4-105, C.R.S., and rule section 6.201(A).

H. Each party in the action may file exceptions to the Initial Decision in accordance with section 24-4-105(14)(a)(I), C.R.S., and rule section 6.202(B)(1)(a).

I. The Department's Administrative Appeals Unit must issue a Final Agency Decision in accordance with rule section 6.202(B).

J. The Final Agency Decision may be further appealed by filing a judicial review action pursuant to section 24-4-106, C.R.S.

6.403 APPEALS FROM SUMMARY SUSPENSION, PROBATIONARY LICENSE, OR LICENSE REVOCATION

A. The Department can summarily suspend, modify to probationary, or revoke a child care license for the reasons stated in section 26.5-5-317(2), C.R.S.

B. The Department must follow the requirements of section 24-4-104(4), C.R.S., in issuing orders of summary suspension for child care licenses. The Department must personally serve, in accordance with Colorado Rules of Civil Procedure Rule 4, the Order of Summary Suspension on the licensee.

1. Once the Order of Summary Suspension has been served, the Department will initiate a case at the Office of Administrative Courts for approving the Order of Summary Suspension and/or proceeding with an Order of Revocation, as described in rule section 6.403(E), below.

C. When the Department makes a decision to revoke or modify a child care license, it must give notice, in writing, of the objective facts or conduct that warrants such action (Data Views and Arguments letter). The Department must send the notice by certified mail or electronic mail to the licensee to the mailing address or email address provided to obtain licensure.

1. The licensee shall have the opportunity to respond to the Data Views and Arguments letter. The licensee's response must be provided in writing, and is due on or before the date listed in the Data Views and Arguments letter, but no earlier than thirty (30) business days from the date provided on the Data Views and Arguments letter.

D. After the deadline provided on the Data Views and Arguments letter expires for the licensee to respond, the Department shall consider any responses provided, and make a decision regarding whether to proceed with modification or revocation of the child care license within thirty (30) days of receiving the licensee's response, or expiration of the licensee's deadline to submit a response to the Data Views and Arguments letter.

1. If the Department proceeds with modification or revocation, it shall send the notice of that decision to the licensee via certified mail or electronic mail, and initiate an appeal at the Office of Administrative Courts.

2. If the Department decides not to proceed with modification or revocation, it shall send notice of that decision to the licensee via certified mail or electronic mail.

E. The Department will initiate a case with the Office of Administrative Courts by causing a Notice of Duty to Answer and Notice of Charges (Notice of Charges) to be filed. The Notice of Charges must assert the grounds for suspending, modifying, or revoking the license. The Department must serve the Notice of Charges on the licensee in accordance with the Office of Administrative Courts procedures, incorporated by reference in rule section 6.201(A).

F. The licensee must respond to the Notice of Charges within thirty (30) days of service or mailing of the Notice of Charges. If the licensee fails to respond, the Office of Administrative Courts Administrative Law Judge may enter a Default Judgment affirming the Department's decision regarding the application or renewal.

G. The burden of proof is on the Department to show, by a preponderance of the evidence, why the license should be suspended, modified, or revoked.

H. All hearings regarding suspension, modification, or revocation of a license must be conducted in accordance with sections 24-4-104 and 24-4-105, C.R.S., and rule section 6.201(A).

I. Each party may file exceptions to the Initial Decision in accordance with section 24-4-105(14)(a)(I), C.R.S., and rule section 6.202(B)(1)(a).

J. The Department's Administrative Appeals Unit must issue a Final Agency Decision in accordance with rule section 6.202(B).

K. The Final Agency Decision may be further appealed by filing a judicial review action pursuant to section 24-4-106, C.R.S.

6.500 LOCAL COORDINATING ORGANIZATIONS (LCO) APPEALS

These rules are promulgated pursuant to section 26.5-2-105(5), C.R.S., to establish a process by which an applying entity that is not selected to act as a Local Coordinating Organization (LCO), or a Local Coordinating Organization for which the coordinating agreement is terminated, may appeal the decision of the Department.

A. LCOs are selected and reviewed by the Department according to sections 26.5-2-103(4) and 26.5-2-105, C.R.S.

B. When the Department denies an entity's application to be an LCO or terminates an LCO's coordinating agreement, it must provide the LCO with a written explanation that includes:

1. the reasons for the Department's decision and a specific explanation thereof;

2. the specific rules, laws, and/or contractual provisions on which the decision is based, and numeric references to each legal authority; and

3. a notice of the right to appeal the Department's decision to the Office of Administrative Courts (OAC), consistent with this rule section 6.500.

C. An entity that is not selected as an LCO, or an existing LCO that has had its coordinating agreement terminated is entitled to appeal that decision in an appeal with the OAC.

D. The entity wishing to appeal the LCO denial or termination (appellant) must submit a written appeal request to the Department no later than thirty (30) calendar days after the date the appellant's application for LCO was denied or the appellant's coordinating agreement was terminated.

E. The Department will initiate the appeal by filing with the OAC:

1. The appellant's timely appeal request; and

2. The Department's Notice of Charges setting forth the factual basis and legal authority for the denial or termination.

F. The Department must serve a copy of the Notice of Charges on the appellant by regular first class mail, on the same day in which the Notice of Charges was filed with the OAC.

G. Upon receipt by the OAC of an LCO appeal request, OAC will assign the appeal a case number, and cause the appeal to be set for hearing through a setting conference.

H. The OAC and the parties to the appeal will set a hearing date at least thirty-five (35) calendar days from the date of the setting conference. The OAC will serve a notice of hearing to the appellant and the Department notifying them of the date, time, and place of the hearing at least thirty (30) days prior to the hearing.

I. The appellant shall file a response to the Department's Notice of Charges within thirty (30) calendar days after service of the Notice of Charges, pursuant to section 24-4-105(2)(b), C.R.S.

J. The parties have the right to present their case or defense through testimony and evidence; to submit rebuttal evidence; and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing will be conducted pursuant to section 24-4-105, C.R.S., and the OAC's procedural rules published at 1 CCR 104-1, and incorporated by reference in rule section 6.201(A).

K. If an appellant fails to appear at a duly scheduled hearing, having been given proper notice, without having given timely advance notice to the Administrative Law Judge of good cause for inability to appear at the hearing at the time, date, and place specified in the notice of hearing, then the appeal shall be considered abandoned and an Order to Show Cause shall be entered by the Administrative Law Judge and served upon the parties by the OAC. The Order to Show Cause shall not be implemented pending review by the Department Administrative Appeals Unit and entry of a Final Agency Decision.

1. The applicant/recipient must be afforded a ten (10) day period from the date the Order to Show Cause was mailed or delivered, during which the applicant/recipient may explain in a writing to the Administrative Law Judge the reason for failure to appear. If the Administrative Law Judge finds that there was good cause for the applicant/recipient not appearing, the Administrative Law Judge shall reschedule another hearing date.

2. If the applicant/recipient submits a writing seeking to show good cause and the Administrative Law Judge finds that the stated facts do not constitute good cause, or if the applicant/recipient does not submit a letter seeking to show good cause within the ten (10) day period, the Administrative Law Judge shall enter an Initial Decision Dismissing Appeal. L. After considering all evidence presented at the hearing, the OAC must issue an Initial Decision as outlined in rule section 6.202(A), within sixty (60) days. The Department's Administrative Appeals Unit will review the Initial Decision pursuant to rule section 6.202(B). The Department's Final Agency Decision is subject to judicial review pursuant to section 24-4-106, C.R.S.

Editor's Notes

New rules 6.100-6.500 were historically located in 9 CCR 2503-8.

COLORADO
Department of Early Childhood

Rule Author/Division Director: Amanda Brubaker and Tim Derocher	Email(s): Amanda.brubaker@state.co.us and Tim.Derocher@state.co.us
Program/Division: Administrative Appeals Unit	CDEC Tracking No.: 2023-08-015
CCR Number(s): 8 CCR 1406-1	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 new and revised rules are to transfer existing rules from the Colorado Department of Human Services (CDHS) to the Colorado Department of Early Childhood (CDEC); establish an appeals process for Local Coordinating Organizations (LCO); and update rule numbering, statutory references, and provide a general cleanup of the rule language for clarity.
Statutory Authority: (Include Federal Authority, if applicable)	Sections 26.5-1-105(1)(a), 26.5-2-105(5), 26.5-4-108(1)(a), 26.5-4-111, and 26.5-5-314, 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: These rules have direct impacts to County departments' operations and are "new" to the Colorado Department of Early Childhood, however, these are existing requirements transferred from the Colorado Department of Human Services.
Effective Date(s) of proposed rule or amendment(s): (Emergency/Permanent)	☑ Mandatory ☐ Discretionary (E) Effective Date: 12/30/23 (P) Effective Date: 3/16/24

	(E) Termination Date: 4/27/23
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]	Emergency and Permanent N/A (Emergency and Permanent)
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: Email and post draft rules on the CDEC Public Notices webpage, to solicit stakeholder feedback: 10/17/23 - 10/25/23 Public folder containing all rulemaking material: https://drive.google.com/drive/folders/10AvH6BZoEouBxImdHcywPGJpBWCzzNdK
Assistant Attorney General Review:	10/31/23 - 11/29/23
RAC County Subcommittee Review Date (if required):	12/7/23 (Emergency Rule) 1/4/24 (Permanent Rule)
Rules Advisory Council (RAC) Review Date:	12/14/23 (Emergency Rule) 1/11/24 (Permanent Rule)
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	12/29/23 (Emergency Adoption) 1/25/24 (Permanent 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 consolidation of the appeals rules related to Colorado Child Care Assistance Program (CCCAP), Child Care Licensing, and Universal Preschool Colorado allow participants to easily access rules that apply to them in one location. This ensures ease of access as well as clarity, ultimately leading to more informed stakeholders.

   The CCCAP appeals rules reflect current practices. Any revisions made to the existing rules were done so to clarify the current processes, creating a positive impact on families and counties.

   The Local Coordinating Organization (LCO) appeals rules will bring administrative ease and a new system to allow potential and current early childhood entities to better position themselves as potential candidates for being selected as an LCO.

   Additionally, having all of CDEC's appeals-related rules in one place will make stakeholder's lives more simply by having not just all of the different programs in one place, but by having unified rule sections that cut across multiple programs and service areas with uniformity.

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).**

   Any revisions made to the existing CCCAP appeals rules were done so to clarify the current processes, creating a short term positive impact on counties as there are no new rules to implement.

   Currently, the LCO appeals process is not in rule. Failure to enact these rules will result in confusion for the field and an abandonment of a statutory requirement.

   This holds true similarly as well, for the general appeals provisions. CDEC is a brand new agency and needs to enact these rules to (i) conform to statute; (ii) give clarity on process to the field; and (iii) create avenues of recourse for stakeholders who feel unfairly aggrieved.

   While these rules will result in some amount of administrative burden, this is because in those instances, the systems literally didn't exist, and this is the initial enactment thereof. Meanwhile, these rules and appeals ecosystem have been structured conscious of how many different programs and services local county departments and CDEC are responsible for and how those programs and services cut across multiple different populations concurrently.

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?**

   These appeals rules aren't particularly economic-focused, however, they certainly will have positive ancillary benefits that are economic-related to individuals involved in the appeals system. These rules lay out what the process is for different programs, who is responsible for what, what timelines have to be adhered to, and which governmental entity owns which parts of the process. This

explicitness and departmental-wide approach will make planning, scheduling, and navigating the appeals process easier for individuals.

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	As CDEC will be taking on administrative appeals for the first time as a new agency beginning in approximately January, the staff and resources required to properly serve notice and documentation, to complete the Final Decisions, and to perform other state-level responsibilities entailed in these rules, is all new. While some of the appeals processes contained in this rule has previously been performed by OEC prior to the establishment of CDEC as a department, this does not account for the centralized functioning of an Administrative Appeals Unit, which is brand new for CDEC and will be taking on both old OEC responsibilities currently housed under CDHS's Office of Appeals, and new responsibilities caused by increased programming and services.
Local Governments/ Counties	Not applicable - These are existing rules and regulations. There are no additional costs for local governments/counties associated with transferring these rules to the new Department (CDEC).
Providers	Not applicable - These are existing rules and regulations. There are no additional costs for providers associated with transferring these rules to the new Department (CDEC).
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	There are no direct or indirect costs for community partners to implement these rules.
Other State Agencies	No impact of other state agencies.
Tribal Communities	No impact 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).**

Rules surrounding administrative appeals must conform to strict statutory requirements and court rules and procedures. OAC is consulted as part of the process. Furthermore, CDEC will have an Administrative Appeals Unit that is responsible for monitoring compliance with the rules. CDEC will then have its work and oversight checked by the judicial system as a co-equal branch of government.

Rather than looking at a metric which attempts to measure programmatic success, we can simply look at the requirements contained within the rules and the laws which they originated from, and see if CDEC is following said rules and requirements precisely. This is an area which does not allow for failure, since it would result in the curtailing of an individual or entity's rights when engaged in appealing a decision/action of CDEC.

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.

These rules must be promulgated for the reasons previously identified regarding statutory compliance and practical reality for the stakeholders involved. Thus, this would be looking at ways we could draft the rules differently.

However, even here, we are guided by court procedures, administrative rights of individuals, and statutory requirements. But, where discretion exists, these rules are designed in a manner to allow individuals access to resources which will help them in their appeal, and thus lead to more expeditious and judicious outcomes. The benefit here is fairness and equity, at the slight expense of further work and burden on the governmental entities involved.

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 other conceivable methods that were identified to conduct administrative appeals in a fair and just manner.

Notice of Proposed Rulemaking

Tracking number

2023-00814

Department

1501 - Office of the Governor

Agency

1501 - Governor's Office of Information Technology

CCR number

8 CCR 1501-11

Rule title

TECHNOLOGY ACCESSIBILITY RULES

Rulemaking Hearing

Date

01/23/2024

Time

01:00 PM

Location

Online on Zoom: https://us02web.zoom.us/meeting/register/tZcudOCorDwuGtf8Yuf_MTn0ZBKY2GkwWJem

Subjects and issues involved

OIT is preparing to promulgate rules as authorized by §24-37.5-106(4), C.R.S. and §24-85-103, C.R.S., necessary to establish the accessibility standards for individuals with disabilities for information technology systems for public entities. The reason for the rules is to improve the accessibility and usability of government information technology products and services in Colorado.

Statutory authority

Section 24-37.5-106(4), C.R.S.
Section 24-85-103, C.R.S.
Section 24-34-802, C.R.S.

Contact information

Name

Alice Huyler

Title

OIT Rulemaking Administrator

Telephone

720-440-4471

Email

oit_rules@state.co.us

OFFICE OF THE GOVERNOR

Governor's Office of Information Technology

TECHNOLOGY ACCESSIBILITY RULES

8 CCR 1501-11

11.1 Authority

The Chief Information Officer in the Office of Information Technology is authorized by the provisions of section 24-37.5-106 (4), C.R.S. and section 24-85-103, C.R.S. to establish rules regarding accessibility standards for an individual with a disability for information technology systems employed by state agencies.

The rules are intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq., C.R.S. (the "APA").

11.2 Scope and Purpose

A. The purpose of these rules is to define the accessibility standards and compliance parameters for individuals with a disability for information technology systems. The reason for the rules is to improve the accessibility and usability of government information technology products and services in Colorado.

B. The standards apply to all Information and Communication Technology (ICT), which includes hardware and software, that is both public-facing and internal-facing, that is procured, developed, maintained, or used by public entities and state agencies.

C. This Information and Communication Technology (ICT) includes but is not limited to websites, applications, kiosks, digital signage, digital documents, video, audio, and third-party tools that are owned or controlled by the public entity.

D. Where components of Information and Communication Technology (ICT) are hardware and transmit information to a user or have a user interface, such components shall conform to the standards.

E. Compliance with these rules does not necessarily ensure compliance with other laws, rules, and regulations. Public entities that are subject to the Americans with Disabilities Act as well as other state and federal disability discrimination laws must be aware of the requirements of all applicable laws and must comply with these laws and their implementing regulations.

11.3 Applicability

These rules and regulations apply to any Colorado state government, or any department, agency, or other instrumentality of a state government. Agency or state agency includes any board, bureau, commission, department, institution, division, section, or officer of the state. Section 24-34-802(1)(c), C.R.S. specifies

that the accessibility standards for individuals with a disability as established by these rules also apply to public entities as defined in section 24-34-301, C.R.S., including any local government, department, agency, special district, or any other instrumentality of a local government. Public entities must fully comply with the standards established pursuant to section 24-85-103(2.5), C.R.S. on or before July 1, 2024.

These rules do not require a public entity to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial, technical, or administrative burden.

11.4 Definitions

Accessible or accessibility: has the same meaning as defined in §24-85-102(1.5), C.R.S., which is Perceivable, Operable, Understandable, and Robust digital content that reasonably enables an individual with a disability to access the same information, engage in the same interactions, and enjoy the same services offered to other individuals, with the same privacy, independence, and ease of use as exists for individuals without a disability.

Conforming alternate version: has the same meaning as defined in the Web Content Accessibility Guidelines (WCAG), which is a version that

A. conforms at the designated level, and

B. provides all of the same information and functionality in the same human language, and

C. is as up to date as the non-conforming content, and

D. for which at least one of the following is true:

1. the conforming version can be reached from the non-conforming page via an accessibility-supported mechanism, or

2. the non-conforming version can only be reached from the conforming version, or

3. the non-conforming version can only be reached from a conforming page that also provides a mechanism to reach the conforming version

Hardware: a tangible device, piece of equipment, or physical component of ICT, such as telephones, computers, multifunction copy machines, and keyboards.

Information and Communication Technology (ICT): Information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; Web sites; videos; and, electronic documents. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, Heating, Ventilation, and Air Conditioning (HVAC) equipment such as thermostats or temperature control devices, and medical equipment where information technology is

integral to its operation and are not considered information technology. However, if the embedded information technology has an externally available web or computer interface, that interface is considered ICT.

Public entity: has the same meaning as defined in §24-34-301, C.R.S., which is (a) Any state or local government; or (b) Any department, agency, special district, or other instrumentality of a state or local government.

Reasonable accommodation: has the same meaning as defined in Title I of the Americans with Disabilities Act (ADA), 42 U.S.C. §12101, et seq., and may include:

A. making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

B. job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Reasonable modification: a modification in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Single digital product: a single digital asset or a collection of digital assets that share a common purpose, intended to support a program or service, created by the same author, group, or organization, including:

A. Electronic communications

B. Digital documents like PDFs and graphics

C. Mobile applications

D. Desktop applications

E. Websites

F. Digital kiosks

G. Input devices

H. Digital video files

I. Audio recordings

Technical standards: as used in these rules, technical standards refers to the standards for conformance in section 11.5 Technical Standards for Technology Accessibility.

Undue burden: an action that requires significant financial or administrative difficulty or expense. In determining whether an action, conformance to the accessibility standards, or a reasonable

accommodation or modification would impose an undue burden, the public entity shall consider all resources available to the program or component for which the ICT is being procured, developed, maintained, or used.

Web Content Accessibility Guidelines (WCAG): a single shared standard for web content accessibility that meets the needs of individuals, organizations, and governments internationally, as published by the World Wide Web Consortium (W3C). (https://www.w3.org/WAI/standards-guidelines/wcag)

11.5 Technical Standards for Technology Accessibility

ICT must conform with the following to the extent that it would not require a public entity to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial, technical, or administrative burden:

A. All ICT must meet W3C WCAG 2.1 guidelines conformance levels A and AA by July 1, 2024.

1. Beginning on October 5, 2025, all ICT must meet W3C WCAG 2.2 guidelines conformance levels A and AA.

2. For future updates to W3C WCAG guidelines, all ICT must meet conformance levels A and AA of the most current non-draft version of the guidelines within two (2) years of the date of release.

B. Note that ICT may also need to meet:

1. The technical standards contained in US Section 508 of the Rehabilitation Act of 1973 Chapter 3: Functional Performance Criteria

2. The technical standards contained in US Section 508 of the Rehabilitation Act of 1973 Chapter 4: Hardware

3. The technical standards contained in US Section 508 of the Rehabilitation act of 1973 Chapter 6: Support Documentation and Services

11.6 Technology Accessibility Transition Plan

A. Each public entity shall develop a technology accessibility transition plan. There is no mandatory accessibility transition plan template. Optional examples of a transition plan template include: W3C WCAG Maturity Model (https://www.w3.org/TR/maturity-model/) or State IT Accessibility Planning Template (https://docs.google.com/spreadsheets/u/0/d/1pM2thBZCXkkNikBaF2bWAXfqg5ujvMeVXnnQuBW37Kk/edit).

B. The technology accessibility transition plan shall include, at a minimum:

1. Annual status updates demonstrating progress on advancing the transition plan

2. Prioritization of ICT according to community impact and strategic impact including the following categories. Consider how the ICT will impact the public entity and its users,

including aspects such as legal requirements, importance to the program, service, or activity, user impact, and usage metrics.

a) Priority 1: high community impact and high strategic impact

b) Priority 2: high community impact and low strategic impact

c) Priority 3: low community impact and high strategic impact

d) Priority 4: low community impact and low strategic impact

3. The steps the public entity is taking to remove accessibility barriers in their ICT

    a) Priority 1 ICT shall conform with the technical standards at the earliest time that does not present an undue financial, technical, or administrative burden.

4. Timelines which clearly communicate when inaccessible ICT will be addressed and the plan for providing reasonable accommodation and modification in the interim

5. Policies for a regular cadence of testing and remediation of ICT

6. A process in which customers can report inaccessible ICT or request an accommodation or modification for inaccessible ICT

    a) A service level agreement for the response time to requests

    b) Those who are responsible for responding to accessibility requests are trained on how to respond to those requests.

7. A notice, prominently and directly linked from the public entity's website or other prominent location in the ICT, instructing how to request reasonable accommodations or modifications or to report inaccessible ICT. The notice shall provide more than one method to request accessible information, which could include an accessible form to submit feedback, an email address, or a toll-free phone number (with TTY), to contact personnel knowledgeable about the accessibility of the ICT.

11.7 Compliance

A. A public entity is in compliance with these rules for ICT that does not fully conform with the technical standards if the ICT, either in and of itself or with a reasonable accommodation or modification, does not prevent an individual with a disability from accessing or engaging in the same or substantially equivalent information, interactions, and transactions, and enjoying the same services, programs, and activities that the public entity offers through its ICT to those without relevant disabilities, with substantially equivalent ease of use.

B. A public entity is in compliance with these rules for ICT that does not fully conform with the technical standards if the public entity publicly publishes, annually updates, and makes meaningful progress on implementing the technology accessibility plan, while also providing reasonable accommodations or modifications for ICT that does not fully conform with the technical standards.

11.8 Best Meets

A. Where ICT fully conforming to the technical standards is not commercially available, the public entity shall procure the ICT that best meets the technical standards consistent with the public entity's business needs.

B. The responsible public entity official shall document in writing:

1. The non-availability of conforming ICT, including a description of market research performed and which provisions cannot be met, and

2. The basis for determining that the ICT to be procured best meets the requirements in the technical standards consistent with the public entity's business needs.

C. Where ICT that fully conforms to the technical standards is not commercially available, the public entity shall provide individuals with disabilities access to and use of information and data by an alternative means that meets identified needs.

11.9 Conforming Alternate Versions

A public entity may use conforming alternate versions of ICT to comply with these rules only where it is not possible to make the ICT directly accessible due to technical, financial, or legal limitations. In general, conforming alternate versions should be avoided.

11.10 Equivalent Facilitation

Nothing in this rule prevents the use of designs, methods, or techniques as alternatives to those prescribed, provided that the alternative designs, methods, or techniques result in substantially equivalent or greater accessibility and usability of the ICT.

11.11 Undue Burden or Fundamental Alteration

A. Where a public entity can demonstrate that full conformance with the technical standards would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial, technical, or administrative burdens, conformance is required to the extent that it does not result in a fundamental alteration or undue financial and administrative burdens.

B. In those circumstances where personnel of the public entity believe that conformance with the standards would fundamentally alter the service, program, or activity or would result in undue financial, technical, or administrative burdens, a public entity has the burden of proving that compliance would result in such alteration or burdens.

1. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

C. If an action would result in such an alteration or such burdens, a public entity shall take any other reasonable action, including providing reasonable accommodations or modifications that would

not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

D. Undue financial, technical, or administrative burden may be demonstrated when, depending on the type of barrier, at least one of the following applies:

1. The resources of the program, service, or activity are not readily and legally available or the use of such funds would fundamentally alter the nature of the program, service, or activity;

2. Contractual constraints prevent the modification of the program, service, or activity; or

3. When the necessary auxiliary aids or services are not feasibly available.

E. The responsible public entity official shall document in writing the basis for determining that conformance to requirements in the technical standards constitute an undue burden on the agency, or would result in a fundamental alteration in the nature of the ICT. The documentation shall include an explanation of why and to what extent conformance with the applicable requirements would create an undue burden or result in a fundamental alteration in the nature of the ICT.

F. ICT or portions of ICT for which full conformance with the technical standards may potentially create an undue burden for public entities could include but is not limited to the following examples:

1. Archived ICT that is maintained for reference, research, or recordkeeping and is not altered or updated after the date of archiving, and is generally organized or stored in a dedicated area identified as archives

2. Pre-existing conventional internal or external electronic documents, presentations, spreadsheets, emails, and pre-existing time-based media such as audio, video, or audio and video unless such documents or time-based media are currently used by members of the public to apply for, gain access to, or participate in a public entity’s services, programs, or activities

3. Content contributed by a third party not under the control of the public entity, that is available on the public entity’s website or applications

4. Third-party content, over which the public entity has no control or responsibility, linked from a public entity’s website or applications

5. Course content available on a public entity’s password-protected or otherwise secured website for admitted students enrolled in a specific course offered by a public postsecondary institution

6. Class or course content available on a public entity's password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course at a public elementary or secondary school

7. Individualized, password-protected, conventional electronic documents that are: About a specific individual, their property, or their account; and Password-protected or otherwise secured

8. Complex and/or atypical images and diagrams to the extent that they cannot be made fully accessible, which could include items such as: blueprints, architectural drawings, technical drawings, site plans, development plans, annexation and plat maps, handwritten documents, medical imaging and health care test results, and any other image where there is no logical methodology to create an alternate description that will make the image understandable to assistive technology

9. Mapping applications and visualizations to the extent that they cannot be made fully accessible

10. Reproductions that cannot be made fully accessible of items in heritage collections, which are goods that are preserved for an historical, artistic, archaeological, aesthetic, scientific, or technical interest

11. Only one vendor solution (sole source) is available

12. ICT for which a contract is currently in place that cannot be modified or terminated without undue financial, technical, or administrative burden

11.12 Reasonable Accommodations or Modifications

A. In general and in accordance with the Americans with Disabilities Act (ADA) Titles I and II (42 U.S.C. 12101 et seq.), if an individual with a disability, on the basis of disability, cannot access or does not have equal access to a program, service, or activity through a public entity's ICT, the public entity shall make reasonable accommodations or modifications for alternative access when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making such modifications would fundamentally alter the nature of the service, program, or activity or present an undue financial, technical, or administrative burden.

B. Each public entity shall post a notice prominently and directly linked from the public entity's website or other prominent location in the ICT describing the methods to request accommodations or modifications for ICT.

C. A public entity may not provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that services are equally effective.

D. A public entity cannot require an individual with a disability to pay to cover the cost of measures, such as providing auxiliary aids or barrier removal, that are required to provide that individual with nondiscriminatory treatment.

E. Examples of auxiliary aids and services that may be provided:

1. Qualified interpreters

2. Note takers

3. Screen readers

4. Computer Aided Real-Time Transcription (CART) services

5. Video interpreting services

6. Assistive listening headsets

7. Television captioning and decoders

8. Telecommunications devices for deaf persons (TDDs)

9. Videotext displays, readers, taped texts, audio recordings, and written materials in Braille, large print, or electronic formats.

11.13 Complaints

A. An individual with a disability or their authorized representative may file a complaint with the public entity responsible for the ICT that does not comply with these rules.

B. Each public entity is required to establish and publish a clearly defined and documented complaint process including the following components:

1. How and where a complaint may be filed

2. Who has responsibility to process complaints

3. How complaints are processed

4. Notification to the complainant that the complaint was received within 10 business days and if additional information is required

5. Time frames for processing and responding to complaints

C. If the public entity determines that it does not have responsibility for the ICT, it shall promptly notify the complainant.

D. Complaint Response

1. A complaint response shall:

a) Be in writing and agreed upon by both parties. The complainant’s consent to the plan shall not be unreasonably withheld.

b) Address each cited complaint.

c) Specify the corrective or remedial action to be taken, if any, within a stated reasonable period of time to occur.

d) Include additional modifications offered during the stated period of time for correction or remediation, if appropriate.

2. Response or resolution of a complaint may be used towards mitigation or reduction of the remedies in a civil suit.

3. At any time, the complainant may file a civil suit pursuant to section 24-34-802, C.R.S., whether or not the public entity accepts or resolves the complaint. An individual is not required to file a complaint with the public entity first. However, it is often more efficient to resolve issues at the public entity level.

COLORADO
Governor's Office of Information Technology

TO: Parties Interested in Colorado's Technology Accessibility Rules
FROM: OIT Technology Accessibility Program and OIT Rulemaking Administrator
DATE: Dec. 15, 2023
RE: Notice of Public Hearing to Consider Creation of 8 CCR 1501-11, Technology Accessibility Rules

The Governor's Office of Information Technology (OIT) will hold a public hearing on January 23, 2024, to consider the creation of permanent rule 8 CCR 1501-11, Technology Accessibility Rules. This public hearing will commence at 10:00 a.m. online, and interested parties may register and attend through Zoom. All interested persons are urged to attend this public hearing and to submit written comments to OIT for consideration concerning the proposed rule creation.

OIT is preparing to promulgate rules as authorized by §24-37.5-106(4), C.R.S. and §24-85-103, C.R.S., necessary to establish the accessibility standards for individuals with disabilities for information technology systems. The reason for the rules is to improve the accessibility and usability of government information technology products and services in Colorado.

Included with this letter is a draft copy of these proposed rules for you to consider when commenting or developing your response, a summary of the changes from the first draft of the rules to this version, and a packet of rulemaking materials. If changes are made to the proposed rules before the hearing, then revised proposed rules will be available on OIT's website by January 15, 2024.

The hearing will include a brief summary of the rulemaking process and summary of the proposed rules, after which we will open the hearing for public comment.

1. Clearly articulated, constructive input helps OIT develop quality rules. See these Tips for Providing Effective Comments.
2. Interested parties are encouraged to submit their written comments prior to the hearing.
    a. Written comments submitted prior to the hearing must be submitted to OIT through the Proposed Technology Accessibility Rules Comment Form or at oit_rules@state.co.us on or before January 11, 2024.
    b. Written comments will be posted on the OIT website and added to the official rulemaking record.
3. Oral comments may be provided at the hearing as follows:
    a. All persons wishing to provide oral comment must sign up to do so at the hearing.
    b. At OIT's discretion, OIT may limit or extend the time of any speaker.

After the hearing concludes, a recording will be available on OIT's website.

Reasonable accommodation will be provided upon request for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this public hearing, please make your request to oit_rules@state.co.us at least one week in advance of the hearing.

This notice marks the step "OIT Announces a Public Rulemaking Hearing" of the OIT Rulemaking Steps and How to Participate.

The proposed rule is provided below:

- Rulemaking Packet, Including the Statement of Authority, Basis, and Purpose
- Summary of Changes from the First Draft Rules Released 11/16/23 to the Proposed Rules Released 12/15/23

Notice of Proposed Rulemaking

Tracking number

2023-00809

Department

1504 - Department of Higher Education

Agency

1504 - Division of Private Occupational Schools

CCR number

8 CCR 1504-1

Rule title

PRIVATE OCCUPATIONAL EDUCATION ACT OF 1981

Rulemaking Hearing

Date

01/23/2024

Time

09:30 AM

Location

Virtual Meeting via Zoom - https://cdhe.colorado.gov/our-board/board-meeting-schedule

Subjects and issues involved

Defining requirements, delineating, and clarifying Rules and Regulations.

Statutory authority

Article 64, Title 23, Private Occupational Schools C.R.S.

Contact information

Name

Mary Kanaly

Title

Deputy Director

Telephone

303-974-2670

Email

mary.kanaly@dhe.state.co.us

RULES AND REGULATIONS

Concerning

The Private Occupational Education Act of 1981

EFFECTIVE April 1, ~~2023~~2024

Private Occupational School Board

Colorado Department of Higher Education

Division of Private Occupational Schools

1600 Broadway – Suite 2200

Denver, CO 80202

The official publication of these rules exists in the Colorado Code of Regulations

(8 Colorado Code of Regulations 1504-1)

Table of Contents

DEPARTMENT OF HIGHER EDUCATION

Division of Private Occupational Schools

PRIVATE OCCUPATIONAL EDUCATION ACT OF 1981

8 CCR 1504-1

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

STATEMENT OF BASIS AND PURPOSE

The Private Occupational School Board, Colorado Department of Higher Education adopts these Rules and Regulations ("Rules") pursuant to the rule making authority as stated in the Private Occupational Education Act of 1981, Colorado Revised Statutes, Article 64 of Title 23 ("The Act"), for the purpose of delineating and clarifying the respective responsibilities of the Private Occupational School Board, the Division of Private Occupational Schools and the Private Occupational Schools under the Act as revised.

I. DEFINITIONS

In addition to the definitions used in the Private Occupational Education Act of 1981, the following will also apply in interpreting the Act and Rules except where the context requires otherwise.

A. "Acceptable full-time equivalent employment/work experience" (for the purposes of instructor qualifications) means full-time equivalent work experience reasonably related to the occupational area to be taught or supervised.

B. "Accreditation" is a status granted to a school by one or more of the accreditation organizations approved by the U.S. Secretary of Education as having met a set of standards established by the organization, or by a programmatic accrediting body recognized by the Council for Higher Education Accreditation as having the ability to accredit freestanding, single-purpose institutions of construction education. Accreditation is voluntary and does not imply automatic transfer of credits from one institution to another.

C. "Admission requirement" means the specific minimum criteria a school must use when accepting a student into the school.

D. "Agent's permit" means the written authorization obtained pursuant to § 23-64-117, C.R.S, to engage in the activities of an agent as defined in § 23-64-103(2) C.R.S., hereinafter referred to as Agent.

E. "Ancillary/supplementary education" means an optional stand-alone course to further the knowledge of a professional holding an active license in good standing that is regulated by a Colorado state professional licensing entity. Those seeking an exemption from the provisions of Article 64, Title 23, C.R.S, for ancillary/supplementary education pursuant to § 23-64-104(1)(c), C.R.S., must apply for the exemption in a manner approved by the Board. The education must be less than 40 hours and must be less than $1000. Additionally, the education, curriculum, syllabi, and licensed professional instructing the education must be approved by an industry recognized certification board, or registered product manufacturer or supplier.

F. "Apprenticeships" are registered and defined by the United States Department of Labor and Employment.

G. "Approval" means approval by the Colorado Private Occupational School Board ("Board") unless otherwise provided by these Rules and requires fulfillment of the standards stipulated by the Act and Rules.

H. "Asynchronous" means a learning activity involving academic engagement in which the student interacts with technology that can objectively monitor and document that the student meaningfully participates and benefits from the activity, and by appropriate method, tracks student participation and performance.

I. "Avocational Education" means any education to facilitate the personal development of individual persons which is distinguishable from one's recognized occupation and is not conducted as part of a program or course designed with the objective to prepare individuals for gainful employment in a recognized occupation. Such avocational education includes programs or courses that instruct participants where the instruction is primarily for personal interest and is recreational such as any hobby, craft, personal development, or non-occupational interest.

J. "Bona fide" means a trade, business, professional or fraternal organization that: is widely recognized by the industry; primarily benefits the organization's membership or mission; conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes; receives funding and revenue and charges fees in a manner that does not incent it or its employees to act other than in the best interest of is membership; compensates its employees in a manner that does not incent its employers to act other than in the best interest of its membership; and has existed and operated as a bona-fide organization for two years or more. The Division has the discretion to determine whether the trade organization meets the definition of bona fide and whether its level of oversight is adequate. Those seeking an exemption from the provisions of Article 64, Title 23, C.R.S, for education pursuant to § 23-64-104(1)(h), C.R.S., must apply for the exemption in a manner approved by the Board.

K. "Certified" is a term used by schools to describe certain programs or courses. The Division does not regulate the use of the term "certified" or certify or license persons.

L. "Computer/online based instruction" means instruction via electronic media.

M. "Continuing Education" means a continuing professional educational program or courses as set forth in § 23-64-104(1)(o), C.R.S.

N. "Course" means a unit of learning which is an integral part of an occupational program of learning.

O. "Contact/Clock hour" means a period of time consisting of a 50- to 60-minute class, lecture, or recitation in a 60-minute period or a 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period for in-person or synchronous delivery.

If the training education, program, or course is asynchronous or synchronous and requires a minimum number of contact/clock hours, the school must demonstrate that the education comports with minimum requirements in accordance with any applicable governing body.

P. "Designated agent" is the school's representative, having a physical Colorado address (no P.O. Box addresses) other than the school's address, and upon whom any legal process, notice, or demand may be served. The designated agent shall be maintained continuously.

Q. "Distance Education" is a formal education process in which the orderly delivery of instruction occurs beyond a school's walls through virtually any media since the student and instructor are in different locations. Distance education may employ a variety of communication methods for delivering instruction to students.

Distance education could be offered either synchronous or asynchronous. Whether a particular method of distance education is appropriate for a particular type of education, is a case-by-case decision by DPOS.

R. "Enrollment" for the purposes of reporting data to the Division means any student who has signed an enrollment agreement with the school and remains enrolled after 10% of the training has elapsed.

S. "Externship" is an educational component for which academic credit is awarded, offered as part of an instructional course or program. Externs follow an experienced professional to learn more about their responsibilities without engaging in specific job related tasks or projects. To be considered an externship the course shall meet the requirements of the Board further defined in Rule III.B.6.

~~/internship" is an educational component for which academic credit is awarded, offered as part of an instructional course or program with job experience included. To be considered an externship/internship the course shall meet the requirements of the Board further defined in Rule III.B.6.~~

T. "Fees", except when used in the context of fees assessed by the Board pursuant to § 23-64-122, C.R.S. ("Board fees"), means a refundable charge assessed to enrolling students and which are intended to cover non-instructional expenses. Fees may not be used to cover instructional expenses or books and supplies. All fees as defined herein must be itemized.

U. "General Education" means that body of instruction which is not directly related to a student's formal technical, vocational, or professional preparation, but is supportive as a required part of a student's course of study, regardless of his or her area of emphasis; and is intended to impart common knowledge, intellectual concepts, and attitudes. For example, math is a general education course, but applied math is not.

V. "In-state school" is a school with physical presence within the state that provides occupational educational services to students.

W. "Instructor" means any person employed by a school, contracted by a school, or who otherwise provides either a residential or distance education course/program for the purpose of delivering instruction or training necessary to meet the stated objectives of the course/program in which the person is qualified to teach; determines educational objectives and activities of any course or program area, including, but not limited to measures, assesses, records, reports or evaluates students' attendance, achievement or completion of lessons, courses or training programs; maintains essential student records and data for which s/he is responsible according to state law or school policy; or exercises technical and functional supervision over instructional staff aides or volunteers.

X. "Instructional Staff" means program supervisors and instructors. Prospective instructional staff means program supervisor or instructor applicants that a school intends to hire.

Y "Internship" is an educational component for which academic credit is awarded, offered as part of an instructional course or program with job experience included. To be considered an internship the course shall meet the requirements of the Board further defined in Rule III.B.6.

ZY. "Major program or stand-alone course revision" means changes since the last approval by the Board to the method of delivery; to the occupational objective; and/or increases or decreases since the last approval in the hours exceeding an accumulated 25% of the total hours of the program or stand-alone course approved.

AAZ. "Minor program or stand-alone course revision" means any revision not meeting the definition of a major program or stand-alone course revision.

BBAA. "Occupational in Nature" for the purposes of determining an exemption under § 23-64-104(1)(c), C.R.S., means a program or course that satisfies the definition of "educational services" or "education" contained in § 23-64-103(13), C.R.S., and the definition of "occupational education" contained in § 23-64-103(17), C.R.S. Any program or course that does not meet this definition is not occupational in nature.

CCBB. "Out-of-state school" is a school located outside of the State of Colorado and offers education from its location or through distance education, which actively solicits, recruits, and enrolls Colorado residents as students. Out-of-state schools may operate in Colorado if said schools comply with the requirements of The Act, in particular in §§ 23-64-117(2) and 23-64-121(6), C.R.S.

DDCC. "Physical presence" means a school that delivers educational services within Colorado, including any combination of factors lending to the determination that the institution maintains a physical presence within the state, including, but not limited to, the presence of a physical facility or equipment, whether owned, leased, rented, or provided without charge; the physical location of student records; or the presence of a resident director or similar administrator.

EEDD. "Prepaid tuition and fees" (for surety purposes) means the total of prepaid, unearned tuition and fees paid by students but not yet earned by the institution, including debt incurred as a result of financial aid disbursements to the student.

FFEE. "Prerequisite" means any education, credential, license, coursework, specialized training, or expertise required as a necessary precondition of admission into a program or stand-alone course. Admission requirements such as high school diploma or GED are not considered prerequisites.

GGFF. "Program" means a group or series of organized courses, lessons, or units of instruction pursued to attain an occupational objective.

HHGG. "Provisional Certificate of Approval" means a conditional approval for a new school to operate. The initial Certificate of Approval is effective for more than one year, but less than two years and during the time of the provisional approval, the school shall establish satisfactory operation and maintain the minimum standards of the Act.

IIHH. "Separate classroom" means a physical location where training occurs that is located a reasonable distance from the main school.

JJII. "Standard Certificate of Approval" means a certificate that acknowledges the compliance of a school with the minimum standards of the Act and authorizes the continuing operation of the school for a period of three years, provided that said school remains in compliance with the Act.

KKJJ. "Stand-alone course" is a single course, or one that can be offered independent of a program, which may take the form of a seminar, workshop, continuing education course, or other similar educational service. A stand-alone course may enhance or advance skills in an existing occupation. Courses from within a program that are offered independently or whereby students receive a Certificate of Completion and transcript must be approved as stand-alone courses.

LLKK. "Synchronous" means the instructor(s) and students utilize technology or in-person delivery whereby the instructor monitors and directly interacts with students during scheduled class time, taking attendance and engaging with all students.

MMLL. "Tuition" means the amount of money paid for a students education, including federal, state, or private funding.This excludes employer paid training that is not required to be reimbursed by the student. charged to students for instruction.

II. GENERAL AND ADMINISTRATIVE

A. Each school shall prominently display its current Certificate of Approval to the public, prospective students, and other interested persons.

B. The student-teacher ratio in each school shall be reasonable in terms of the suitability of the facility, adequacy of equipment and the method of instruction, and shall be submitted for approval; once approved by the Board, the ratio as approved must not be exceeded at any time.

C. Each school that allows tuition or fee financing through installment or deferred payment plans shall comply with the provisions of appropriate State and Federal laws concerning consumer credit and truth-in-lending or any other such law related to consumer financing.

D. The payment of all Board fees shall be timely made by the school online or by other approved means.

E. The Division Director shall set the Board agenda; which agenda may be modified by the Board.

F. For schools under corporate ownership, the Division may consider the on-site resident school director as the school representative and primary Division contact.

G. All applications and forms submitted to the Division requiring a fee as outlined below in the Fee Schedule must be complete within one year of receipt. If the Division has communicated deficiencies that must be cured prior to approval but the applicant(s) fails to make necessary change(s) to meet requirements of the rules and regulations, the application shall expire after one year, requiring the school to resubmit the application, fee and supporting documentation in order to be considered for approval.

FEE SCHEDULE

Effective Date April 1, 2023

FEE TYPE	FEE AMOUNT
Provisional In-State School: Initial Application for Certificate of Approval (COA) --includes up to five new Programs and Stand-Alone Courses. Any additional programs or stand-alone courses are subject to the Programs/Course fees listed below.	$ 5,000.00 Per School
Initial COA Application for Additional Campus	$ 2,500.00 Per Campus
Renewal In-State School: Standard COA – three (3) year period	$ 2,000.00 Per School/Campus
Programs/Courses (Per Program and/or-Stand-Alone Course:):	
New Program/Stand Alone Course per Campus	$ 500.00
Major Revision Program/Stand Alone Course per campus	$ 500.00
Minor Revision Program/Stand Alone Course per campus	$ 125.00
In-State Agent Permit:	$ 300.00 Per Agent
In-State Agent Permit for Multiple Campus Locations *under same ownership with same school name:* One (1) Permit per agent—valid at all campus locations (Provisional or Standard COA)	$ 300.00 Per Agent
Out-of-State Initial/Renewal: Initial application and annual renewal	$ 2,500.00
Out-of-State Agent Permit per year *under same ownership with same school name:* One (1) Permit per agent—valid at all campus locations	$ 300.00 Per Agent
Student Assessment: In-State and Out-of-State, Quarterly per Enrolled Student (out-of-state is Colorado resident that resides with-in Colorado receiving training or Colorado resident recruited to attend out-of-state school)	$ 5.00 Per Enrolled Student (Subject to Change)
ADDITIONAL FEES	**Per School**
Change of School Location (per campus)	$ 500.00
Change of School Name (per campus)	$ 250.00
Change of School Ownership	$ 5,000.00
Exemption Request Fee	$ 300.00
Student Transcript for Closed School	$20.00 Per Transcript
Failure to pay and/or late payment of fees	1st violation: minimum $100; 2nd minimum $300; 3rd minimum $500, and each violation thereafter $500.
Failure to adequately and timely submit Annual Filings pursuant to Rule V	$500.00 minimum per violation per year

PLEASE NOTE:

1. Fees are NOT refundable.
2. Fees are established pursuant to § 23-64-122(1), C.R.S., "for the direct and indirect costs of the administration of" the Private Occupational Education Act of 1981.

III. MINIMUM STANDARDS

In addition to the minimum standards outlined in the Act, a school shall comply with the following standards and shall not be owned, operated by, or employ any person who is addicted to or dependent upon alcohol or any controlled substance or such person who is a habitual user of a controlled substance if the use, addiction, or dependence is reasonably found by the Board to present a danger to students, clients, or prospective clients.

A. Financial

1. To meet this minimum standard, the school, its owners, or guarantors shall demonstrate it has sufficient financial resources to:

   a. Provide instructional services as described in its application for the full duration of any program or course of instruction.

   b. Make refunds as required by the Act.

2. A school submitting a provisional application for approval shall provide a statement of projected operations for a twelve (12) month period from the financial statement date.

3. A school submitting documentation to establish financial stability shall provide at a minimum a complete set of compiled financial statements which includes a cover sheet, balance sheet, income and expense statement, source and use statement and all supportive notes, prepared by an independent public accountant or a certified public accountant using a format which reflects generally accepted accounting principles and procedures.

B. Approval of Education Services

1. Schools shall offer only educational services through the method of delivery that has been approved by the Board.

   a. Program or stand-alone course approval applications shall state the program/course occupational objective and list any prerequisites for acceptance to the program, course, or stand-alone course. Program or stand-alone course approval applications must be submitted in a manner approved by the Board, including but not limited to, detailed curriculum, course schedules, equipment lists detailing the equipment to be used, and catalog course descriptions for each course to be taught within the program.

   b. The Board may require new and/or revised educational services to be evaluated by qualified professionals as defined by the Board.

   c. Distance education is an acceptable method of delivering educational services.

      (1) Courses and programs offered via distance education must meet the objectives set forth within the course curriculum and the requirements of this rule. Schools must submit documentation outlining the specifics of the distance education in the forms provided by the Division.

2. All new programs and stand-alone courses and program revisions shall be submitted to the Board for review and approval prior to the proposed date of implementation. Said revisions shall be submitted in a manner which will allow a reasonable period of time for such review. Major program revisions will be considered by the Board. Minor program

revisions will be reviewed by Division staff for compliance with minimum required standards and may be approved by staff. The Director reserves the right to submit any new or revised program and/or stand-alone course to the Board. A finding of noncompliance with minimum required standards will result in the submittal being returned to the school for changes necessary to meet compliance standards.

3. Programs or stand-alone courses regulated by another agency must have and maintain continuous approval by the body before the program/stand-alone course can be presented to the Board or staff for action. The withdrawal of approval of a program/stand-alone course by the other regulatory agency will result in an automatic withdrawal of approval of the program/stand-alone course by the Board.

4. Schools shall assess students prior to enrollment and shall only admit those who demonstrate a reasonable likelihood of success in completing the education/training and being employed in the field for which trained. Documentation of this assessment shall be included in each student's record. A high school diploma, GED, Ability to Benefit Test, or other assessment may be utilized to meet the minimum requirements of this section.

5. The school shall provide adequate instruction, including having a sufficient number of qualified instructors to meet the needs of students.

6. Externships/Internships - No internship or externship will be approved in a program if it requires students to be on duty more than eight hours per day for five consecutive days. Appropriate breaks must be included in the externship/internship schedule, pursuant to any and all existing state and federal laws. An externship/internship must be under the coordination of a qualified instructor. To be considered an externship or internship, the program shall:

    a. Be part of the approved curriculum of the school.

    b. Provide a designated school instructor who meets qualifications as defined in Rule III.E. and has oversight of the student's education at the internship/externship site.

    c. Have a written training plan that specifies the expected educational outcome.

    d. Designate an on-site supervisor who will guide the student's learning and who will participate in the student's evaluations.

    e. Be described in the school catalog and include the purpose and requirements of the course.

    f. Provide a schedule of time required for the training and include an expected completion date.

    g. The student extern/intern is not to replace an employee.

    h. Externships/internships may be paid or unpaid.

    i. If the externship/internship is part of the course requirements, students may not be considered as graduates or issued a graduation credential until the externship/internship has been satisfactorily completed.

    j. Externship/internship locations and available positions must be filed with the program application and/or revision. For each location and available position, the

school must maintain documentation acceptable to the Board from an authorized representative of the location verifying that the location will provide the specified number of positions for a defined timeframe that corresponds with the program requirements. All externship/internship location contracts along with number of student positions shall be made available to the Division at time of such request/audit. The number of students enrolled in a program may at no time exceed the number of available externship/internship positions. Location of externship/internship shall be a location other than that of the school/institution where a student commences all remaining educational requirements. A school on-site clinic/lab in lieu of a program required externship/internship is not acceptable.

C. Instructional Equipment, Facilities and Materials

1. Programs and stand-alone courses shall only be offered in institutional facilities that are appropriate for learning activities necessary to complete the occupational objective of the program.

2. The equipment and facilities of each school shall conform to safety, health, and other applicable requirements of local, county, state, and federal agencies.

3. Equipment shall be maintained in good shape and materials shall be available in sufficient quantities to permit skilled development at required levels by all students.

4. Teaching aids, exclusive of basic supplies, must be as listed in the school catalog in effect at the time of the student's enrollment.

D. Administrative staff

1. The school shall have sufficient administrative, instructional and support personnel based on student enrollment and needs for educational and support services, including required record keeping.

2. Each school shall designate an on-site school director for each approved campus.

3. Each school shall designate at least one in-state agent.

4. Each school shall designate a contact person responsible for instructional staff matters, including but not limited to maintaining and providing Division access to instructor qualification files.

E. Educational staff

1. Program Supervision - each school offering associate degree programs shall assure supervision of each program area in at least one of the following ways:

a. For programs of any size - by appointing a program supervisor who has the following qualifications:

(1) A minimum of three years of successful teaching experience in the program area to be supervised; or at least one year of successful teaching experience in the program area to be supervised, plus the establishment of an acceptable program advisory committee whose

members are qualified to advise the program supervisor on the program content, and

(2) Meets the minimum qualifications for an instructor as defined in Rule III.E.2.

b. For programs utilizing not more than two instructors - by establishing an acceptable program advisory committee whose members are qualified to advise the resident director on the program content.

2. Instructional Staff - all instructional staff employed by a school shall possess the following minimum qualifications to deliver educational services in the program area to be taught:

a. Except as otherwise provided in Rule III.E.2.b.(3)(a), each school shall be responsible for assuring and documenting that its instructors meet minimum qualifications. Within 30 days after a school hires a new instructor, the school shall submit to the Division, in the format required, certification that the instructor meets minimum qualifications.

b. Minimum Qualifications:

(1) Experience. In those occupational areas for which industry standards or a governmental agency require a license, certification, registration, journeyman's card, or similar regulatory credential ("Regulatory Credential") to engage in the occupation, a minimum of two years comprised of at least 4,000 hours of acceptable full or part-time equivalent employment/work experience must be documented. Any licensure, certification(s), registration(s), journeyman's card(s) or other similar regulatory credential(s) which must be continuously maintained and in good standing shall be required.

(2) Education. For those occupations that do not require a license, certification, registration, journeyman's card or similar regulatory credential to engage in the occupation, either a minimum of five years comprised of at least 10,000 hours of acceptable full or part-time equivalent employment/work experience must be documented, or successful completion of an accredited or Board approved program in the occupational area as well as a minimum of two years comprised of at least 4,000 hours of acceptable full or part-time equivalent employment/work experience is required. Work experience in the occupational school after graduation may be credited toward the two-year requirement provided the work performed is related to the occupational area.

(3) Background Check. A school shall only employ instructors who are of good reputation and free of moral turpitude. Consideration of past felonies involving moral turpitude or other crimes or offenses involving moral turpitude (offenses involving an act of baseness, vileness, or depravity in private or social duties owed to individuals or to society) ("offenses") must bear a reasonable relationship to the activity of providing occupational education. Past offenses shall be given consideration in determining whether instructional staff is of good reputation and free of moral turpitude at the time of application, however, past offenses do not automatically disqualify instructional staff. Instructional staff may meet minimum qualifications despite past

offense(s) if they have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society.

(a) Instructional staff and prospective instructional staff who may be teaching in schools designated by the Board as teaching students under sixteen years of age ("minor student"), a list of such schools that is available by contacting the division, must submit fingerprints and pay the required fee to the Colorado Bureau of Investigation for the purpose of conducting a state and national fingerprint background check in accordance with § 23-64-110, C.R.S.

(i) The Division Director shall give notice to any such instructor or prospective instructor when a fingerprint background check returned to the Board shows that the person has been convicted of, pled *nolo contendere* to, or received a deferred prosecution or deferred sentence for a felony or misdemeanor described in § 22-60.5-107(2)(b) or 2.5(a), C.R.S., or any other offense involving moral turpitude. The notice shall indicate that the instructor or prospective instructor may submit written data, views, arguments, or information with respect to the background check and any subsequent rehabilitation that would tend to show that he or she is prepared to accept the responsibilities of teaching minor students. The Division Director shall give notice to a school that employs or is considering employing an instructor subject to a background check that the instructor's or prospective instructor's qualifications are under review but the notice to the school shall contain no reference to or details of the results of the fingerprint background check.

(ii) The Director will consider the results of the background check and the instructor's or prospective instructor's response to the notice and any other information deemed necessary to determining whether the instructor or prospective instructor is qualified. The instructor or prospective instructor will not be deemed qualified unless the instructor or prospective instructor provides clear and convincing evidence and reasons establishing that he or she has been rehabilitated and is ready to accept the responsibilities associated with teaching minor students. Such a prospective instructor whose results of the fingerprint background check are under review by the Division Director, for such circumstances identified herein, shall not commence instruction of any student under the age of sixteen (16) until such time that the Division Director notifies the school and prospective instructor that a favorable qualification to instruct has been determined. The Director will notify the instructor or prospective instructor of the Director's determination. Notice to the school shall only include an indication of whether the instructor is qualified or unqualified.

(iii) The instructor or prospective instructor may file an appeal to an adverse Director's decision concerning qualification to instruct based on criminal history to the Board within 20 days after notice. The appeal shall state in writing the reasons for appealing the notice denying the qualification, including the facts, circumstances and/or arguments supporting its appeal. In the event the Board denies an appeal, the instructor or prospective instructor may request a hearing in accordance with the State Administrative Procedures Act. A final order of the Board is subject to judicial review in accordance with § 24-4-106, C.R.S. in an administrative hearing on instructor qualifications, a certified copy of the judgment of a court of competent jurisdiction of a conviction, the acceptance of a guilty plea, a plea of *nolo contendere* or a deferred prosecution or deferred sentence shall be conclusive evidence of the court's action.

(iv) All information related to the results of a fingerprint background check and any investigation of such results shall be treated as confidential data in accordance with § 23-64-109, C.R.S., except as necessary to conduct an investigation of qualifications, until such time as there may be a hearing in accordance with the State Administrative Procedures Act on the matter. A school that employs or is considering employing an instructor subject to a background check shall be notified when a review of instructor qualifications following submission of a background check is complete. Notice to the school shall include only an indication of whether the instructor is qualified or unqualified.

c. Exceptions.

(1) Modeling instructors - shall have a minimum of 1,000 hours of acceptable employment/work experience in modeling or related specialized occupations and completion of a modeling or specialized program in the occupational area(s) to be taught, or 2,000 hours of acceptable work/employment experience in the occupational area(s) to be taught.

(2) Tax preparation instructors - shall have attained a minimum of 1,000 hours of employment/work experience in tax preparation within the last five years, 200 hours of such employment/work experience must have occurred within the last 24 months. In lieu of having acquired 200 hours within the last 24 months, the instructor may substitute a suitable tax preparation update course, which was successfully completed within the past 12 months, and which included at least five contact hours.

(3) Securities Instructors – securities instructors offering educational services for occupations regulated by the United States Securities and Exchange Commission are exempt from the licensure, certification(s), registration(s), journeyman's card(s) or other similar regulatory credential(s) requirements of Rule III.E.2.b.(1).

(4) General Education subject areas do not require verified occupational experience. Refer to Part I, paragraph T of these rules for the definition of general education.

d. Compliance Standards.

(1) Each school shall be responsible for assuring and documenting that its instructors meet minimum qualifications, except as provided in Rule III.E.2.C.(3). In a format prescribed by the Board, the school shall maintain an instructor qualification file for each instructor employed. Such instructor qualification file shall include data verifying employment/work experience, education and any applicable regulatory credentials including, but not limited to:

(a) Instructor application

(b) For instructors teaching in occupational areas for which industry standards or a governmental agency require regulatory credentials:

(i) A copy of any educational credentials (degree certificate or diploma) showing completion of a training or degree program at an accredited or Board approved school in the occupational area(s) to be taught

(ii) A copy of applicable license(s), certification(s), registration(s), journeyman's card(s) or similar regulatory credential(s) and a statement of good standing from the applicable board, agency, association, or similar regulatory body as identified in Rule III.E.2(b)(1).

(c) For instructors teaching in occupational areas for which industry standards or a governmental agency do not require regulatory credentials:

(i) A copy of any educational credentials in the occupational area(s) to be taught, or at a minimum, a transcript of courses with emphasis in the occupational area(s) to be taught or related areas sufficient to show that the instructor has a background of education adequate to enable the instructor to carry out the stated objectives of the specific courses, lessons, or units of instruction to be taught. (See Rule III.E.2(b)(2)).

(d) Documentation of required hours of employment/work experience in the occupational areas to be taught, verified by signature of the instructor and the school director.

(2) The school must notify the Division in writing within thirty (30) calendar days of any change in employment status of instructional staff.

(3) A school's instructor qualification files shall be available to the Division upon request. The Division may conduct unannounced site visits to inspect instructor qualification files and any other reasonably related

records to ensure that the school is fulfilling its responsibilities to employ only qualified instructors.

e. Guest Instructors. A guest instructor is a person whose special experience or expertise in an area related to the subject matter to be taught will make a contribution to the educational processes that will be supportive and expanding and whose use is to be limited to not more than 20% of the program or stand-alone course. Guest instructors must be either licensed or certified in their area of expertise, if the industry or occupation requires licensure or certification, or be a registered product manufacturer or supplier. Students currently attending the school and persons who have attended the school at any time during the previous twelve (12) months may not act as guest instructors. The school shall maintain a record of all guest instructors with the respective courses to which they contributed that documents the special experience or expertise of the person.

f. Emergency Instructor Provision. A school owner/director experiencing a hardship in hiring an instructor who meets minimum standards and qualifications pursuant to the Act and Rules may petition the Board for permission to hire an instructor who does not meet applicable employment/work experience and/or education qualifications. The school shall provide the Board a summary of the conscientious efforts made to secure the services of a fully qualified instructor by describing the person's suitability for the position and attesting that the hiring of the person is essential to the preservation of the program/course. The Board may request additional detailed information to support the search efforts prior to approving or rejecting the petition. Board approval to hire an instructor under the emergency instructor provision is granted for a period of time as deemed appropriate by the Board.

g. Continuing Competency.

(1) All instructional staff is expected to maintain continuing competency. Instructional staff shall provide the school on a regular basis, but not less than every three (3) years, with sufficient and recent educational and employment/work experience to assure up-to-date knowledge of content and practice to continue teaching in the occupational field for which they are employed to teach.

(2) Competency must be documented and demonstrated by successful completion of courses from accredited colleges or universities or board approved schools, occupational experience, workshops/seminars, or continuing education approved by a regulatory agency, organization or recognized professional association, or school directed education/training, and by a written annual performance evaluation of the instructor performed by the school director or other authorized school representative. The performance evaluation must include, at a minimum, an evaluation of the instructor's effectiveness in meeting the stated objectives of the course and his/her performance with respect to properly and accurately maintaining and handling all student records for which the instructor is responsible under school policy, including but not limited to attendance and grades and/or satisfactory completion of lessons, courses, or training programs.

(3) Where applicable, all instructional staff shall maintain an active, and in good-standing current license, certification, registration, or similar

regulatory credential as required by governmental regulatory agencies or industry standards to practice in the occupational field.

(4) In respect to instructional staff of minor students (under the age of sixteen), in order to continue to be deemed competent, said instructor may not be judicially determined to have committed, nor pled guilty or nolo contendere to a felony or misdemeanor described in § 22-60.5-107(2)(b) or 2.5(a), C.R.S. or any other crime of moral turpitude, after his or her hire date by the school. Such change in instructor criminal history must be reported to the school not later than ten (10) calendar days from the date of entry of a judicial adjudication or court acceptance of a guilty plea or nolo contendere plea to a felony or misdemeanor described in § 22-60.5-107(2)(b) or 2.5(a), C.R.S. or any other crime of moral turpitude. A school employing an instructor with such a post-hire change in criminal history must report to the Division in writing not later than twenty (20) calendar days from the receipt of instructor notice. The school's report to the Division shall include the complete name of the instructor, the nature of the change on criminal history, and the date and content of the adjudication or plea entry. The instructor may be required by the Division to submit additional information, including, but not limited to, sufficient court documents identifying the circumstances surrounding the charges and plea, and adjudication. The Division, upon notice, shall conduct a timely review of; issue a Director Decision and afford appeal rights in accordance with the procedure outlined in Rule III.E.2(b)(3)(a)(iii).

(5) In order to meet and continue to maintain required minimum standards, all staff working at a school, including instructional and administrative staff, may not be judicially determined to have committed, nor pled guilty or *nolo contendere* to any felony or misdemeanor relative to the health and safety of all persons upon the school premises. Such change in instructor criminal history must be reported to the school not later than ten (10) calendar days from the date of entry of a judicial adjudication or court acceptance of a guilty plea or nolo contendere plea to a felony or misdemeanor described in subsection (5). A school must report to the Division in writing not later than twenty (20) calendar days from the receipt of notice of any judicial adjudication. The school's report to the Division shall include the complete name of the instructor or staff member, the nature of the change on criminal history, and the date and content of the adjudication or plea entry. The Division may require additional information, including, but not limited to, sufficient court documents identifying the circumstances surrounding the charges and plea, and adjudication. The Division, upon notice, shall conduct a timely review of; issue a Director Decision and afford appeal rights in accordance with the procedure outlined in Rule III.E.2(c)(3).

h. Enforcement and Penalties.

(1) Enforcement.

(a) The Board has the authority to investigate, upon a student complaint or upon its own motion, or upon delegating to the Division Director the qualifications of any instructor. If the Board has reasonable grounds to believe that an instructor fails to meet instructor qualifications, the Board shall issue a notice of noncompliance setting forth the reasons that a school has violated or is violating the act or rules and a period of time within

which the instructor and the school may respond by submitting written data, views, arguments, or information in the notice. The school shall set forth in its response to the notice the measures that it used to verify the qualifications of the instructor and whether it knew of any deficiencies in the instructor's qualifications.

(b) The Board shall consider the submissions of the school and the instructor to the notice and notify the school and the instructor of the board's determination as to 1) whether the instructor meets minimum qualifications, and 2) if the instructor does not meet minimum qualifications, whether the school knew or should have reasonably known that the instructor did not meet minimum qualifications.

(c) The school and/or the instructor may request a hearing on the Board's decision within thirty (30) days after notice in accordance with the State Administrative Procedures Act. A final order of the Board is subject to judicial review in accordance with § 24-4-106, C.R.S.

(2) Penalties.

(a) An instructor whose qualifications are found to be deficient may not be employed by the school as an instructor.

(b) A school that knew or should have reasonably known that an instructor did not meet instructor qualifications and employed or continued to employ such instructor, may be subject to fines and/or other disciplinary action up to and including revocation of the school's certificate of approval.

(c) If the instructor is found to have engaged in any of the following, the Board may also order that the instructor is ineligible for employment at any school within the jurisdiction of the Board for such period of time as ordered by the Board:

(i) The instructor obtained employment or demonstrated continuing competency through misrepresentation; fraud; misleading information; or otherwise untruthful statements submitted or offered with the intent to misrepresent, mislead or conceal the truth.

(ii) The instructor failed to keep essential student records or failed to turn over all students records for which s/he is responsible according to state law or school policy.

(iii) The instructor falsified or misrepresented records or facts relating to students' attendance, grades or satisfactory completion of lessons, courses, or training programs.

(iv) The instructor is employed by a school that teaches minor students and at any time during his or her employment has been convicted of or pled *nolo*

contendere to or received a deferred sentence or deferred adjudication for a felony or misdemeanor described in § 22-60.5-107(2)(b) or 2.5(a), C.R.S. or any other crime of moral turpitude.

F. Requirements for Schools to offer Associate Degree Programs

1. All private occupational schools making application to grant associate degrees shall hold a Certificate of Approval by the Board.

2. Schools offering an Associate Degree shall be accredited by an accrediting agency which is officially recognized by the United States Department of Education or the Council for Higher Education Accreditation.

3. All Associate Degree Programs offered by a school shall be approved by the Board.

4. Application Procedure--An approved school shall make a separate application to the Board for the approval of each associate degree program. The application shall clearly indicate the course of instruction for which the degree will be awarded. Information must be included in sufficient detail to indicate conformance with the following standards of instruction.

   a. The curriculum in the appropriate associate degree program shall include a program of instruction which corresponds with general education curriculum course credits required in institutions that prepare the student to enter full-time, entry level employment in their chosen occupation.

   b. Types of Associate Degrees:

      (1) Associate of Arts (A.A.)

      (2) Associate of Science (A.S.)

      (3) Associate of Applied Science (A.A.S.).

      (4) Associate of Occupational Studies (A.O.S.).

5. Admission - The student shall possess a high school diploma or a GED and be able to matriculate in a degree program.

6. Curriculum - The curriculum in the appropriate associate degree program of study will consist of courses and/or the occupational education area as approved by the Board. The appropriate associate degree program of instruction will correspond with the curriculum course credits required in institutions of higher education offering such associate degree programs. This means a minimum curriculum as defined below:

   a. Associate of Arts (A.A.) - Degree Programs, requiring 45 quarter credit hours or 30 semester hours of general education courses (Arts, Humanities, Social or Behavioral Sciences, or one of the professional fields of emphasis). The range of credit hours is 60 semester or 90 quarter hours to 68 semester or 102 quarter hours. Associate of Arts degree programs are intended for transfer into baccalaureate degree programs with junior standing offered by senior colleges and universities.

b. Associate of Science (A.S.) - Degree Programs, requiring 45 quarter credit hours or 30 semester credit hours of general education courses (Mathematical, Biological or Physical Sciences, or one of the professional fields' emphasis). The range of credit hours is 60 semester or 90 quarter hours to 68 semesters or 102 quarter hours. Associate of Science degree programs are intended to transfer into baccalaureate degree programs with junior standing offered by colleges or universities.

c. Associate of Applied Science (A.A.S) - Degree Programs requiring 18 quarter credit hours or 12 semester credit hours of general education courses. The range of credit hours is 60 semester or 90 quarter hours to 75 semester or 108 quarter hours. Exceptions to the maximum may be granted by the Board if there is a demonstrated need. These programs are occupational in nature and are not intended for transfer to baccalaureate degree programs; however, certain courses may be accepted toward a bachelor's degree at some colleges and universities. Associate of Applied Science degree programs are intended to prepare students to enter full-time skilled, paraprofessional occupations.

d. Associate of Occupational Studies (A.O.S) - Degree Programs. In addition to the minimum total credits of 90 quarter credit hours or 60 semester credit hours require only that the school justify each such program to the Board in terms of a logical sequence of courses which will assure adequate preparation for entry level employment in a particular occupational field. These programs are occupational in nature and are not intended for transfer to baccalaureate degree programs; however, certain courses may be accepted toward a bachelor's degree at some colleges and universities. Associate of Occupational Studies degree programs are intended to prepare students to enter full-time, skilled para-professional occupations.

7. Degree credit hours are computed as follows:

For each quarter credit hour awarded:

10 theory/lecture contact hrs. = 1 credit

20 laboratory contact hrs. = 1 credit

30 intern/externship contact hrs. =1 credit

For each semester credit hour awarded:

15 theory/lecture contact hrs. = 1 credit

30 laboratory contact hrs. = 1 credit

45 intern/externship contact hrs. = 1 credit

Computation of hours may not be rounded up.

8. Faculty - Instructors teaching only general education courses in associate degree programs shall hold at least a baccalaureate degree with adequate preparation in areas the instructors are assigned to teach.

9. Cosmetology and related credit hours. The following only relates to cosmetology and related areas. The school catalog shall include at least the following information which is to be given to the student at the time of the execution of the enrollment agreement.

   For all cosmetology schools credit hours are computed as follows:

   30 theory/lecture contact hours = 1 semester credit

   30 laboratory contact hours = 1 semester credit

   30 intern/externship contact hours = 1 semester credit

G. Catalogs

1. Each school shall publish a catalog which shall include at least the following information:

   a. The name and address of the school.

   b. Catalog number and date of publication.

   c. Table of contents.

   d. Names of owners and officers, including any governing Boards.

   e. The school calendar, including holidays, enrollment periods and beginning and ending dates of terms, courses or programs as may be appropriate.

   f. The school's enrollment procedures and entrance requirements, including late enrollment, if permitted.

   g. A description of the school's placement assistance. If no assistance is offered, the school shall make this fact known.

   h. The school's attendance policy.

      (1) Minimum attendance requirements.

      (2) Circumstances under which a student will be placed on probation for unsatisfactory attendance,

      (3) The conditions under which a student may be readmitted.

      (4) Student leaves of absence.

      (5) Dismissal for disruptive behavior,

      (6) Any fees resulting from student absence.

   i. The school's policy concerning satisfactory progress, and how the policy will be enforced which shall also include:

      (1) How progress is measured and evaluated, including an explanation of the system of grading used.

(2) The conditions under which the student may be readmitted if terminated for unsatisfactory progress.

(3) A description of any probation policy.

j. The school's system for making progress reports to students.

k. The school's policy regarding student conduct, including causes for dismissal and conditions for readmission must be described.

l. A description of the school's facilities; teaching aids, exclusive of basic supplies; and equipment used for training.

m. A description of each approved educational program offered including objectives, prerequisites, tuition, fees, length, or, in the case of distance education, number of lessons or units of instruction, as appropriate and the school shall designate credit hours as semester or quarter.

n. The school's policy concerning credit granted for previous education, training, or experience.

o. A statement that the school does not guarantee the transferability of its credits to any other educational institution and that transferability is up to the receiving institution unless it has written agreement on file of current acceptability of such credits from other institutions.

p. The school's cancellation and refund policy which shall also include the school's method of determining the official date of termination.

q. Reasonable additional costs to the student for make-up hours for completion of the program.

r. In-state schools shall use a statement printed in the catalog to read, "Approved and Regulated by the Colorado Department of Higher Education, Private Occupational School Board." Out-of-state schools shall use a statement printed in the catalog to read, "Agents approved by the Colorado Department of Higher Education, Private Occupational School Board."

s. The policy for the granting of credit for previous training shall not impact the refund policy.

t. A section informing the student of the school's grievance policy and protocol for reviewing and resolving student complaints, appeals, or claims. This section must also include:

(1) A statement that informs the student that they or their guardian may file complaints in writing with the Board through the Division's established process within two years after the student's last date of attendance at the school, or at any time prior to the commencement of training.

(2) This section shall include the web address and phone number for the Division of Private Occupational Schools.

(3) The complaint policy shall be displayed in a type-size no smaller than that used to meet any other requirements of this section.

u. A school shall publish its admission standards in its catalog. A school must secure documentation to demonstrate that each applicant meets all admission requirements, for example, high school diploma, general equivalency.

v. Course/programs not regulated by DPOS but offered by the school should clearly be designated as such in the school catalog.

2. Supplemental pages(s) may be used as part of the school catalog provided they are used in such a way as to become an effective part of the catalog and may include information such as faculty, calendar, and any other pertinent information. Supplemental pages shall show an effective date and shall be presented to each prospective student prior to execution of any enrollment contract.

3. Postponement clause – the school's policy regarding postponement of starting date and the effect on student's rights to a refund is to read:

"Postponement of a starting date, whether at the request of the school or the student, requires a written agreement signed by the student and the school. The agreement must set forth:

a. whether the postponement is for the convenience of the school or the student; and,

b. the deadline for the new start date, beyond which the start date will not be postponed.

If the course is not commenced, or the student fails to attend by the new start date set forth in the agreement, the student will be entitled to an appropriate refund of prepaid tuition and fees within 30 days of the deadline in accordance with the school's refund policy and all applicable laws and Rules concerning the Private Occupational Education Act of 1981."

4. Any changes to approved school catalogs, including addenda, shall be submitted to the Division for review. The school will not print or distribute the new catalog prior to confirmation of review by the Division. It is the responsibility of each school to ensure that catalogs, including addenda, are in compliance with Rules and The Act.

H. Student Enrollment Agreement

1. Student enrollment agreements for educational service shall comply with the provisions of § 23-64-126(1), C.R.S., be fully completed, dated, and signed by the student and by an authorized representative of the school prior to the time instruction begins.

2. The school shall retain a copy of the student enrollment agreement and one copy shall be delivered to the student at the time of execution or by return mail when solicited by mail.

3. The student enrollment agreement shall include information that will clearly and completely define the terms of the agreement between the student and the school, including at least the following:

a. The name and address of the school and the student.

b. The title of the educational service, date training is to begin, and the number of contact/credit hours or units of instruction or lessons for which enrolled.

Enrollment Agreements shall indicate that credit hours are semester or quarter credit hours.

c. The total costs incurred by the student in order to complete the training. Such costs shall be itemized and shall include tuition, all fees, books, supplies where appropriate and all other expenses necessary to complete the training. The student enrollment agreement shall outline the method of payment or the payment schedule.

d. The school's refund policy, including the method of determining the official date of termination, displayed in a type-size no smaller than that used to meet any other requirements of this section.

e. A statement acknowledging receipt of a current/approved copy of the school catalog (including addenda) and student enrollment agreement by the student.

f. A statement that students may file complaints online directly with the Division within two years from the student's last date of attendance. A statement that informs the student that they or their guardian may file complaints in writing with the Board through the Division's established process within two years after the student's last date of attendance at the school, or at any time prior to the commencement of training.

(1) This section shall include the web address and phone number for the Division of Private Occupational Schools.

(2) The complaint policy shall be displayed in a type-size no smaller than that used to meet any other requirements of this section.

g. The complaint policy shall be displayed in a type-size no smaller than that used to meet any other requirements of this section and must precede any other grievance/complaints policies referenced.

h. In-state schools shall use a statement printed in the enrollment agreement to read, "Approved and Regulated by the Colorado Department of Higher Education, Private Occupational School Board." Out-of-state schools shall use a statement printed in the enrollment agreement to read, "Agents approved by the Colorado Department of Higher Education, Private Occupational School Board."

4. Student enrollment agreements must reflect and be consistent with the school catalog in effect at the time of enrollment. Any changes to approved student enrollment agreements, including addenda, shall be submitted to the Division for review. The school will not print or distribute the new student enrollment agreement prior to confirmation of review by the Division. It is the responsibility of each school to ensure that student enrollment agreements, including addenda, are in compliance with Rules and The Act.

5. Student enrollment agreements shall reflect minimum admission(s) requirements as outlined in the school catalog.

I. Student Records

1. A diploma, certificate of completion, and transcripts shall be conferred only upon the successful completion of the prescribed course(s) of instruction as stated in the catalog and approved by the Private Occupational School Board.

2. Appropriate certification shall be conferred upon successful completion of individual subjects or a combination of subjects as listed in the catalog and approved by the Private Occupational School Board.

3. Each school shall maintain for a minimum of six years from the date the student discontinues his/her training at the school, student records in electronic format which shall include at least the following:

   a. A copy of the enrollment contract and other instruments relating to the payment for educational services

   b. Student information including:

      (1) Student name.

      (2) Permanent or other address at which the student may be reached.

      (3) Records relating to financial payments and refunds.

      (4) Record of attendance as determined by the school.

   c. Date of completion or termination of training and the reason(s) as determined by the school.

   d. Record of any student grievance and subsequent resolution.

   e. Copies of all correspondence or other records relating to the recruitment, enrollment, and placement of the student.

4. Student transcripts and certificates of completion, diploma, or degree must be retained by the school in perpetuity.

   a. Upon request, each school shall provide a transcript within seven (7) days to the student who has satisfied all financial obligations currently due and payable to the school or who meets the criteria set forth in § 23-5-113.5(2)(b), C.R.S., which provides, in relevant part, that a postsecondary institution shall not refuse to provide a transcript or diploma to a current or former student:

      (1) On the grounds that the student owes a debt other than a debt for tuition, room and board fees, or financial aid funds; or

      (2) If the student can demonstrate that the transcript or diploma is needed for one of the following exemptions:

         (a) A job application;

         (b) Transferring to another postsecondary institution;

         (c) Applying for state, federal, or institutional financial aid;

         (d) Pursuit of opportunities in the military or National Guard; or

         (e) Pursuit of other postsecondary opportunities.

Per the statute, subsection III.I. 4.a.(2) of this Rule does not apply to a student who is foreign and present in the United States on a nonimmigrant visa.

b. This transcript of the individual student's records of achievement must be maintained as a permanent record in a form that provides at least the following information:

(1) Name of student

(2) Title of program/course, including total number of hours of training received, specify the number of hours and method of delivery for each course, and dates of enrollment.

(3) Grade record of each course, lesson, or unit of instruction and the cumulative grade for the program.

(4) Explanation of grading system.

cb. Upon request, each school must provide a certificate of completion, diploma, or degree within seven (7) days to the student who has satisfied all academic and financial obligations currently due and payable to the school, or who meets the criteria set forth in § 23-5-113.5(2)(b), C.R.S., which provides, in relevant part, that a postsecondary institution shall not refuse to provide a transcript or diploma to a current or former student:

(1) On the grounds that the student owes a debt other than a debt for tuition, room and board fees, or financial aid funds; or

(2) If the student can demonstrate that the transcript or diploma is needed for one of the following exemptions:

(a) A job application;

(b) Transferring to another postsecondary institution;

(c) Applying for state, federal, or institutional financial aid;

(d) Pursuit of opportunities in the military or National Guard; or

(e) Pursuit of other postsecondary opportunities.

Per the statute, subsection III.I.4.c.(2) of this Rule does not apply to a student who is foreign and present in the United States on a nonimmigrant visa.

d. This certificate of completion, diploma, or degree of the individual student's records of achievement must be maintained as a permanent record in a form that provides at least the following information:

(1) Name of student

(2) Title of program/course, including total number of hours of training received and date of completion.

5. In the event of closure of a school, the school shall deposit with the Division all educational, financial, or other records as described below of said school in electronic

format. These records shall be submitted to the Division within sixty (60) days of school closure. Any delay in record submission or any missing records shall be accounted for.

a. Student educational records including transcripts, records of completion, diplomas, and certificates for all students since the school began operation. Financial records, including enrollment agreements, ledger cards or record of student payments and refund calculations for all students who attended the school for two years prior to the closure. The school is required to submit to the Division a student roster including contact information of all students who attended two years prior to closure.

b. It is acceptable for the school to maintain its records once it is no longer operating as a DPOS-approved school if the school is continuing to operate in other locations or has met an approved DPOS exemption. It is also acceptable for a school to use a third-party transcript/record retention company, approved by the Division, to maintain their records.

c. The school must provide the Division with detailed information regarding where the records and transcripts are maintained.

6. In the event of voluntary closure of a school, the school owner or designee shall:

a. Notify the Division in writing within twenty-four (24) hours of the school closing.

b. Provide a record of the status of all students currently enrolled whose training program has not been completed within forty-eight (48) hours following school closure.

IV. APPLICATION FOR CERTIFICATE OF APPROVAL AND SURETY REQUIREMENTS

A. School Name

The complete legal name and location of each school shall be clearly stated in its application for a Certificate of Approval.

B. Parent Corporation Financial Information

A school which is a subsidiary of another corporation shall submit to the Board as a part of the school's application current financial information about the parent corporation including separate financial statements pertinent to the school.

C. Franchise Agreement

A school operating under any form of franchise agreement must file said franchise agreement and all attachments thereto with the Board as a part of its application for a Certificate of Approval. No franchise school shall be approved unless the franchise agreement contains a provision that the franchise shall not be terminated by the franchiser or the franchisee by reason of default or otherwise, until sufficient arrangements, as determined by the Board, shall have first been made to assure the completion of training of students enrolled in said school; and for the appropriate preservation and/or transfer of pertinent school and/or student records to the Division.

D. School Sites

1. Schools under common ownership which offer educational services and maintain ongoing individual facilities, faculty or students shall be considered as independent entities.

2. A school that intends to offer educational services on an intermittent schedule that does not represent a consistent pattern at locations other than the approved school site as described above must notify the Division thirty (30) days prior to each course or other educational service start date. No exterior or interior school emblem/logo is to be displayed at times other than during approved sessions. This notification shall include:

    a. Date of educational service and the approved program or stand-alone course to be offered on forms provided by Division staff.

    b. Length of stand-alone course or other educational service.

    c. Number of students anticipated.

    d. Location of facility (complete physical address).

    e. Description of facility, including square feet, type of facility, etc.

    f. New surety calculation and, if appropriate, a new bond, bond rider, or alternative surety to cover all students regardless of the training location.

    This would be classified as a temporary offsite educational offering not to exceed three months and would not require a separate Certificate of Approval. However, this temporary offsite educational offering would fall under the jurisdiction of the school conducting the educational services and that school is responsible for maintaining all Rules and Regulations within the scope of its Certificate of Approval.

3. A separate classroom may be used under special circumstances if the student's education or training benefits from the usage of a separate classroom location due to enhanced or specialized equipment and/or teaching aids. A school that uses a separate classroom must notify the Division using forms provided by the Division. A site visit will be conducted prior to approval.

4. Schools shall make an application for change of location not later than thirty (30) days prior to moving location. The Division shall have authority to approve applications for change of location.

E. Surety Bonds and Surety Bond Alternatives

1. At the time application is made for a Certificate of Approval, or when new programs, stand-alone courses or continuing education courses are added, the applicant shall file with the Division a surety bond or surety alternative which meets the requirements set forth in these Rules. Schools located in Colorado each shall file one bond or alternative covering the school and its agents.

    a. A school whose surety value is found by the Board to be insufficient to fund the unearned, prepaid tuition of enrolled students shall be noncompliant with these Rules, and, if, after a period of time determined by the Board from the issuance of a notice of noncompliance, the school has not increased its surety to an acceptable level, it shall be subject to revocation or suspension of its certificate of approval.

b. Pursuant to §§ 23-64-119(5), 23-64-121(8), and 23-64-121(10), C.R.S.:

(1) Schools must submit a continuation certificate to the Division no less than fifteen (15) days prior to the renewal date of the bond confirming the next term of coverage.

(2) Schools must submit the following for alternative surety instruments:

(i) Schools that have assigned a certificate of deposit to the Division as a surety bond alternative must submit a bank statement or other acceptable verification from the bank within fifteen (15) days of the maturity date or as requested by the Board. The bank statement must show that the certificate of deposit account remains open, the account number, the amount of the Certificate of Deposit, and the next maturity date/ term.

(ii) Schools that have assigned a savings account to the Division as a surety bond alternative must submit annually, or as requested by the Board, a current bank statement or other acceptable verification from the bank confirming the account remains open. The bank statement must show the savings account number and the balance of the savings account.

(iii) Schools that have assigned an irrevocable letter of credit to the Division as a surety bond alternative must submit verification that the letter of credit requirements are still being met and that the irrevocable letter of credit remains in effect, within fifteen (15) days prior to the expiration date or as requested by the Board. The verification must include the letter of credit number, the amount, and the next expiration date or term, if applicable.

(iv) Schools that have executed a participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of private occupational schools must submit annually, within fifteen (15) days prior to the execution anniversary date, or as requested by the Board, verification that the participation contract is current. The verification must include the amount and the next expiration date or term, if applicable.

2. The bond or alternative-submitted to the Division with an application for a Certificate of Approval shall be in the amount required by § 23-64-121(3), C.R.S. Each application for a Certificate of Approval shall include a bond calculation in the form of a letter signed by an authorized representative of the school showing in detail the calculations made pursuant to § 23-64-121, C.R.S., and explaining the method used for computing the amount of the bond or alternative.

3. In order to be approved by the Board, a surety bond must be:

a. Executed by the applicant and by a surety company authorized to do business in Colorado; and

b. In a form acceptable to the Board; and

c. Conditioned to provide indemnification to any student or enrollee of an in-state or out-of-state school or his/her parent or guardian determined by the Board to have

suffered a loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of a Certificate of Approval ceasing operation; and

d. A clear, clean electronic copy of an original bond.

4. In lieu of a surety bond, an applicant may file with the Division an assignment of savings account that:

   a. Is in a form acceptable to the Board; and

   b. Is executed by the applicant; and

   c. Is executed by a state or federal savings and loan association, state bank or national bank which is doing business in Colorado and whose accounts are insured by a federal depositor's corporation.

5. In lieu of a surety bond, an applicant may file with the Division a timed certificate of deposit that:

   a. Is issued by a state or federal savings and loan association, state bank or national bank which is doing business in Colorado and whose accounts are insured by a federal depositor's corporation;

   b. Is either:

      (1) Payable to the Division of Private Occupational Schools; or

      (2) In the case of negotiable certificate of deposit, is properly assigned without restriction to the Division of Private Occupational Schools; or

      (3) In the case of nonnegotiable certificate of deposit, is assigned to the Division of Private Occupational Schools by assignment in a form satisfactory to the Division of Private Occupational Schools.

6. In lieu of a surety bond, an applicant may file with the Division an irrevocable letter of credit that:

   a. Is in a form acceptable to the Board; and

   b. Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Private Occupational School Board to have suffered loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of a Certificate of Approval ceasing operation.

   c. Is executed by a state or federal savings and loan association, state bank or national bank which is doing business in Colorado and whose accounts are insured by a federal depositor's corporation.

7. In lieu of a surety bond, an applicant may file with the Division of Private Occupational Schools a properly executed participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of private occupational schools, which:

   a. Is in a form acceptable to the Board; and

b. Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation or any minimum standard or as a result of a holder of a Certificate of Approval ceasing operation and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the alternative entity will assume.

8. Whenever these Rules require a document to be executed by an applicant the following shall apply:

a. If the application is a corporation, the document must be executed by the president of the corporation or person(s) designated by the corporate Board.

b. If the applicant is a limited liability corporation the document must be executed by the members.

c. If the applicant is a partnership, the document must be executed by all general partners.

d. If the applicant is an individual, the document must be signed by the individual.

e. If the applicant is a state agency, the document must be signed by the Director of that Department.

f. If the applicant is a local government, the document must be signed by the major or Board president.

9. Any bonding alternative entity must have independent financial resources necessary to meet the contractual obligation to the students of a failed member institution.

10. Any bonding alternative entity must have resources equal to or exceeding the maximum bond required of any single school.

11. The Board may make demand on the surety of a school that has ceased operation as authorized in § 23-64-121(5), C.R.S.

a. To the extent that the school's records allow, the Division will provide written notice to students enrolled within two years of the time of the school closure. The notice will be sent to the students' last known address as provided by the school, and the student will have 30 days to request train-out assistance or file a claim with the Board for the student's prorated share of the prepaid, unearned tuition and fees paid by the student, Claims for refund must be accompanied by necessary documentation.

b. After the 30-day notice time has expired, the Division will use the amount of the surety to issue refunds for students' prorated share of the prepaid, unearned tuition and fees paid by the student, or for the implementation of a train-out for the students of the school,

c. If surety exceeds the amount necessary to satisfy Rule IV.E.11.b., the remainder may be retained by the Division within the Colorado Department of Higher Education as reimbursement up to the amount of any actual administrative costs incurred by the division that are associated with the school closure and documented as such.

F. Types of Certificates of Approval

1. Provisional certificate of approval

a. Initial applications may receive a provisional certificate of approval that is effective for more than one (1) year and less than two (2) years.

b. No more than two (2) consecutive provisional certificates of approval will be granted.

2. Standard certificate of approval

a. Upon satisfactory demonstration of school operations during the provisional approval period schools may receive a standard certificate of approval, effective for three (3) years.

3. Application for change of ownership

a. An application for change of ownership and control shall be filed for approval by the Board whenever a change of fifty-one (51) percent or more of the school's equity occurs. The seller, prior to the effective date of the change of ownership, shall notify the Board in writing of the pending sale and submit all student records to the Division in an electronic format compliant with Rule III.(I).5. ~~.~~ The seller is also required to provide proof that the Surety and Agents will remain active until new owners are approved by the Board. Required filings including Annual and Assessments shall be continued by the seller until the new owners are approved by the Board.

b. The buyer shall make application for change of ownership prior to or within thirty (30) days after the change of ownership. Said application shall be made on electronic format as prescribed by the Board and shall include all information and documentation as specified in the applications ~~provided by the Division~~. Failure to do so shall result in the suspension of the school's Certificate of Approval by operation of law until such application has been received and approved by the Board. The Board may review or otherwise treat an application for a change of ownership as an application for a provisional certificate of approval.

~~b~~. ~~In addition, the new owners shall provide the new organizational chart and the names, addresses and corporate titles of all persons having a financial interest of ten (10) percent or more of the equity; copy of the sale agreement, agreement of new owners to assume responsibility for training or refunding of prepaid tuition and fees for students enrolled under previous ownership; and a report on any other changes made in the school's organization and operations.~~

V. ANNUAL FILINGS

Each school holding a Certificate of Approval shall file annually on or before July 31st a bond calculation, student enrollment and graduate/completion data, placement statistics, instructional staff, and an attestation that all student records for the reporting period are maintained in electronic format as follows:

A. Bond Calculation

1. Each school holding a Certificate of Approval shall file annually a bond calculation justifying the continued adequacy of the bonding or alternative being maintained by the school. The calculation shall be based on the amount of maximum prepaid tuition and fees collected and held at any one time during the calendar year. The calculation shall be covered in the surety requirements as specified in Rule IV.E.

2. Upon the Board's request the school shall also file at a minimum a complete set of compiled financial statements which includes a cover sheet, balance sheet, income and expense statement, source and use statement and all supportive notes, prepared by an independent public accountant or a certified public accountant using a format which reflects generally accepted accounting principles and procedures.

B. Student Enrollment and Graduate/Completion Data

1. Any private occupational school holding a certificate of approval to operate, and which offers a program/course certificate, diploma, or associate degree as defined by rule Part I, "Definitions" of the Rules and Regulations Concerning The Private Occupational Education Act shall, on an annual basis, submit to the Division student enrollee and graduate data consistent with the following:

   a. Name of the school;

   b. Name/identification of the respective program(s) for which certificates, diplomas or associate degrees are awarded; and

   c. The number only (not by names or by any other personally identifying student information) of graduates having successfully completed and been awarded either a certificate, diploma, or associate degree, within the annual reporting period. This graduate quantitative/number data shall be provided in respect to or reported by each program so identified by the school in fulfillment of this annual reporting requirement.

   d. The race, ethnicity, and gender data of its post-admission enrollees and graduates. An individual student may decline to provide their own data.

   e. The printed name and written or electronic signature of the school representative submitting said annual report on behalf of the school, and an acknowledgement that with his or her signature this representative affirms under penalty of law that the school exercised due diligence in identifying, compiling, and reporting a true and complete graduate data report.

2. Violation of this rule by a school not exempt from this reporting requirement may be subject to disciplinary actions, fees, fining authority, or other powers of the Board as defined by statute and Board rule.

C. Placement Statistics

1. Each school which offers or advertises placement assistance for any course or instruction shall file with the Division its placement statistics as follows for each program for the preceding year.

   a. The number of graduates who requested placement assistance.

   b. The number of graduates who received job offers for which they were trained.

c. The number of graduates who received job offers in a related area for which they were trained.

2. For schools offering and marketing placement assistance, data on such activities shall be submitted on or before July 31st.

D. Reporting of Instructional Staff

1. All schools are required annually to submit, in a form prescribed by the Board, a list of all instructional staff employed to include the following:

a. The name of the instructor, date of hire, name of program and stand-alone courses taught and the signature of the school director or authorized school representative certifying that the instructor meets all minimum qualifications required by these rules. The instructional staff list must be submitted to the Division.

b. With respect to instructional staff of minor students (under the age of sixteen), the school must include in the annual filing, an affirmation stating that the school has exercised due diligence to determine whether the instructional staff has acquired a new criminal history since the last annual report. This may include requiring the instructional staff to resubmit a fingerprint background check in compliance with Rule III.E.2.

VI. AGENTS

A. Each school shall be responsible for the conduct of its agents in the performance of their duties and shall select each of them with the utmost care, provide them with adequate training and arrange for the regular and proper supervision of their work.

B. The agent shall not use the availability of student aid as an inducement.

C. No school shall conduct surveys for the purpose of developing enrollment leads near (3 blocks or less) any state or federal social services program center (i.e., welfare, food stamps, unemployment, etc.).

D. A school is allowed to solicit in public places provided that the name and address of the school is displayed.

E. Out-of-State Schools

1. Prior to the issuance of an agent's permit to any person representing a school located outside of this state, the school shall submit at least the following:

a. Copies of documents relating to the school's authorization to operate in its home state and any accreditation's or other approvals held by the school.

b. A published catalog containing the information required by these Rules and Regulations.

c. Copies of all media advertising and promotional literature intended for use in Colorado must include the school name, address, telephone number and location(s) where training will be offered.

d. Copies of all student enrollment agreements or other instruments evidencing indebtedness and intended for use in Colorado which must comply with the provisions specified in these Rules and Regulations.

e. The name and Colorado physical address separate from that of the school of a real person who is a designated agent, or a designated agent service, upon whom any process, notice or demand may be served. The Division shall be notified in writing of any change in said agent within ten (10) days of the change.

2. The Board shall not be required to act upon an application for an agent's permit for any person desiring to engage in the performance of the duties of an agent for a school located outside this state until the school shall have complied with the provisions of this section.

3. Revisions to catalog or student enrollment agreement must be reviewed by Division staff and receive approval prior to utilizing same in Colorado.

4. The utilization by any agent of the school of any catalog or student enrollment agreement not specifically submitted to the Division for review will be viewed as a willful and deliberate violation of the Rules and the Board shall summarily suspend all agent permits for the school pending a hearing which shall be promptly initiated and determined.

F. An agent's permit is not required for referrals.

VII. DECEPTIVE TRADE AND SALES PRACTICES

As clarification and in furtherance of the protections against the deceptive trade and sales practices outlined in the Private Occupational Education Act of 1981, as amended, a school shall comply with the following:

A. A guarantee of placement shall not be falsely promised or implied.

B. If a school located within the State of Colorado refers to the fact that it is approved, the school will use the following phraseology as it pertains to its approved educational programs or courses only: "Approved and Regulated by the Colorado Department of Higher Education, Private Occupational School Board."

C. Distance education shall be disclosed in the school's advertising and promotional materials that distance education is the primary instructional methodology.

D. A school or other representative shall not falsely or deceptively represent that the school has restrictions on enrollment as to number, date of submission of application or similar false representations.

E. A school or its agents and representatives shall not make or perpetuate any false or deceptive statements in regard to any other postsecondary school or college, whether public or private, nor shall a school or agent recruit students who are currently enrolled in another school.

F. A school shall advertise only in its approved name.

G. All schools shall satisfy the requirements of this section by including the school name, a phone number, street address, city, and location where training is to be offered in all print advertising including electronic media.

H. A school shall not represent directly or by implication that there is a substantial demand for persons completing any of the programs offered by the institution unless the institution has a reasonable basis for the representation documented by competent, objective, and statistically valid data.

I. A school shall clearly indicate in its advertising and promotion materials that education and/or occupational training is being offered.

J. A school may use only testimonials that accurately reflect current practices of the institution or current conditions or current employment opportunities in the field. Such testimonials may be used if prior written consent is obtained and no remuneration or other consideration is made for either the consent or the use of the endorsement.

K. A school may advertise that it is endorsed by manufacturers, business establishments, organizations or individuals engaged in the line of work for which it provides training, if the school has written evidence of this fact and this evidence is made available to the student.

L. No school may advertise "accredited" unless such status has been received and maintained from an accrediting body currently listed as recognized by the U.S. Secretary of Education or is accredited by a programmatic accrediting body recognized by the Council for Higher Education Accreditation as having the ability to accredit the freestanding, single purpose institution of construction education. This refers to the U.S. Department of Education's List of Agencies (Eff. Oct. 2019), available electronically at https://ope.ed.gov/dapip/#/agency-list (later amendments not incorporated), or the Council for Higher Education Accreditation's Directory of Recognized Accrediting Organizations (Updated July 2021), available electronically at https://www.chea.org/chea-recognized-accrediting-organizations (later amendments not incorporated). The U.S. Department of Education is located at 1244 Speer Blvd., Ste. 310, Denver, CO 80204. The Council for Higher Education Accreditation is located at One Dupont Circle NW, Suite 510, Washington, DC 20036. The Colorado Division of Private Occupational Schools maintains a copy available for public inspection at 1600 Broadway, Ste. 2200, Denver, CO 80202, during regular business hours. Upon request, the Colorado Division of Private Occupational Schools will provide an electronic copy for free or a printed copy for a reasonable per page charge.

M. No school may offer access to Title IV funds without approval to participate in the Title IV student federal fund program from the United States Department of Education. This refers to the Higher Education Act of 1965, P.L. 89-329, § 401, 79 Stat. 1219, 1232-1254 (1965), available electronically at https://www.govinfo.gov/content/pkg/STATUTE-79/pdf/STATUTE-79-Pg1219.pdf. Later amendments not incorporated. The U.S. Department of Education is located at 1244 Speer Blvd., Ste. 310, Denver, CO 80204. The Colorado Division of Private Occupational Schools maintains a copy available for public inspection at 1600 Broadway, Ste. 2200, Denver, CO 80202, during regular business hours. Upon request, the Colorado Division of Private Occupational Schools will provide an electronic copy for free or a printed copy for a reasonable per page charge.

N. A school shall not advertise as an employment agency or the equivalent.

O. A school shall not deceptively advertise in conjunction with any other business or establishment.

P. A school may not follow-up employer help wanted advertisement with offers of training.

Q. Any school which has an agency shall not advertise in the help wanted section for that agency.

R. Any school or agency which offers classes at "no charge" but receives direct or indirect payment of fees or other pecuniary benefits or considerations, "for other services including publications,

photo sessions and workshops" is considered to be a school and is required to hold a Certificate of Approval from the Board.

S. Students who apply for and properly represent their financial aid application and do not qualify for financial aid within the first two weeks of classes and are accepted on the basis of forthcoming financial aid eligibility shall not be referred to a collection agency.

~~T. All flight schools/flying clubs/individuals advertising commercial advanced training and collecting prepaid tuition and fees must hold a Certificate of Approval.~~

~~U. All Federal Aviation Administration Part 141 and/or Part 147 approved flight schools and/or maintenance schools must hold a Certificate of Approval. This refers to the FFA Aeronautics and Space Rule, 14 C.F.R. §§ 141, 147 (2019), available electronically at https://www.ecfr.gov/cgi-bin/text-idx?SID=5704117b53d59554801670a843884cf4&mc=true&node=pt14.3.141&rgn=div5 and https://www.ecfr.gov/cgi-bin/text-idx?SID=197bd38b282991600e4da161e10e4fdf&mc=true&node=pt14.3.147&rgn=div5, respectively. Later amendments not incorporated. The Federal Aviation Administration's Flight Standards District Office is located at 26805 East 68th Ave., Ste. 200, Denver, CO 80249. The Colorado Division of Private Occupational Schools maintains a copy available for public inspection at 1600 Broadway, Ste. 2200, Denver, CO 80202, during regular business hours. Upon request, the Colorado Division of Private Occupational Schools will provide an electronic copy for free or a printed copy for a reasonable per page charge.~~

T~~V~~. Institutions placing advertisements in classified columns of newspapers or other publications to attract students must use only classifications such as: "Education," "Schools," or "Instruction." Headings such as "Help Wanted," "Employment," "Career Opportunity," or "Business Opportunities" may be used only to procure employees for the institution.

VIII. REFUND POLICY

A. The official date of termination or withdrawal of a student shall be determined in the following manner:

1. The date on which the school is noticed to be the student's last date of actual attendance.

2. The date on which the student violates published school policy which provides for termination.

3. Should a student fail to return from an excused leave of absence, the effective date of termination for a student on an extended leave of absence or a leave of absence is the earlier of the date the school determines the student is not returning or the day following the expected return date.

B. Refunds must be calculated from the official date of termination or withdrawal and calculated on the period of time designated on the current agreement executed with the student and must be made within thirty (30) days from the official date of termination.

C. Application/registration fees may be collected in advance of a student signing an enrollment contract; however, all monies paid by the student will be refunded if the student does not sign an enrollment contract and does not enter school.

D. No student shall be continued on an inactive basis in violation of school policy without written consent of the student. Inactive students must be terminated within 30 days of the next available start date and refunded appropriate prepaid tuition and fees at that time.

E. Refunds, including bond claim refunds, will be made to sponsoring agencies or individuals rather than to students.

F. In the event of a school ceasing operation, the student shall be entitled to 100 percent of the prepaid, unearned tuition and fees at the time of closure unless a teach-out is available and accepted by the student.

IX. COMPLAINTS

A. The school shall attempt to resolve internally filed or noticed student complaints promptly and fairly in accordance with the procedures stated in its grievance policy and shall not subject a student to punitive action because the student filed a grievance/complaint with the school or the Board.

B. Complaints or claims pursuant to §§ 23-64-121(4)(a) or 23-64-124, C.R.S., may be filed electronically with the Board through the Division's established process within two years after the student's last date of attendance at the school, or at any time prior to the commencement of training.

C. The Board and/or Division may initiate an investigation. The Board may issue a notice of noncompliance and/or commence administrative or court action, with or without a complaint at any time that it has reason to believe that a school has violated or is violating the Act or Rules.

X. STATE ADMINISTRATIVE PROCEDURES ACT

All final decisions made by the Board regarding issuance, denial, and revocation of all types of Certificates of Approval, agent permits and instructor qualifications according to § 23-64-129. C.R.S., will be under the provisions of the "State Administrative Procedures Act", article 4 of title 24.

XI. DISCIPLINARY ACTIONS

A. The Board may issue a cease and desist order, deny, suspend, revoke or place on probation a school's Certificate of Approval or agent's permit if the applicant or holder:

1. Violates any provision of the Act or the Rules and Regulations established pursuant to the Act.

2. Fails to meet the requirements of the Act or the Rules and Regulations established pursuant to the Act; or uses fraud, misrepresentation, or deceit in applying for or attempting to apply for approval.

3. Is convicted of or has entered a plea of *nolo contendere* or guilty to, or has received a deferred sentence or a deferred prosecution for a felony.

4. Violates probation.

5. Uses deceptive advertising.

6. Fails to notify the Division in writing within seven (7) days of any action which changes the school's status with the United States Department of Education, any other state or federal regulatory body, accrediting body, trade or membership association, or any national association or organization. This includes any adverse or disciplinary action, including but not limited to, probationary status.

B. The Board may use an administrative law judge employed by the Office of Administrative Courts in the Department of Personnel and Administration to conduct hearings or hold the hearings itself if time is determined to be a factor.

C. The Board may enter into a voluntary agreement with any school or agent to suspend, revoke, or place on probation the school's certificate of approval or the agent's permit. Such agreements shall have the force and effect of an order of the Board and violation of the terms of such agreement by a school or agent shall be grounds for disciplinary action up to and including revocation of the school's certificate or the agent's permit.

D. Administrative Fines or Fees. In addition to or in lieu of seeking a temporary restraining order or an injunction pursuant to § 23-64-131(1), C.R.S., the Board may impose an administrative fine on a school or agent which violates the Act, the Rules, or an order of the Board. In pursuing a school or agent which violates the Act, the Rules, or an order of the Board, the Board may also assess fees incurred by the Board for the direct and indirect costs of the administration of the Act pursuant to § 23-64-122(1), C.R.S. Fines or fees for violations shall be determined by the Board pursuant to the Act and the Rules. There is no statutory minimum or maximum fine or fee amount prescribed by the Act. Fines or fees may be imposed by the Board, unless otherwise provided by the Act or the Rules.

1. Procedure.

a. Notice of Non-Compliance. Based upon a reasonable belief that a violation occurred, the Board shall issue a Notice of Non-Compliance to the school or agent requesting a response. After receiving the response, the Board shall deliberate and make a decision on the issuance of a fine or fee and the fine or fee amount.

b. Notice of Fine or Fee. If the Board decides to fine a school or agent, the Board shall issue a Notice of Fine or Fee, which shall:

(i) Identify the school or agent;

(ii) Provide a concise statement of the facts and/or conduct constituting the violation and the specific statutory provision or rule violated;

(iii) The fine or fee assessed in accordance to this Rule;

(iv) A statement that the school or agent has a right to request a hearing of the Board's decision; and

(v) A statement of how and when the fine or fee must be paid.

2. Factors Used to Determine Fine or Fee Amount. In determining whether to impose a fine or fee and the amount of the fine or fee, the Board shall consider and take into account the following aggravating and mitigating factors in establishing the degree of seriousness of the violation(s) for which to impose a fine or fee on a school or agent:

(a) Aggravating Factors.

- The school or agent has failed to correct the violation or continues or repeats the violation;

- The violation involved intentional, misleading, and false representation, reporting and disclosure;

- The actual and potential damages suffered, and actual or potential costs incurred, by the Board, or by any other person as a result of the violation;
- The violation resulted in intentional and reckless willful and negligent conduct;
- The violation resulted in significant negative impact, threat, or harm to the public; and
- The school or agent has engaged in a pattern of noncompliance with Board laws, rules, and orders.

(b) Mitigating Factors:

- The school or agent self-reported the violation;
- The school or agent demonstrated prompt, effective and prudent response to the violation, to remedy and mitigate whatever harm might have been done as result of the violation;
- The school or agent cooperated with the Board, or other agencies and impacted parties with respect to addressing the violation; and
- The violation was outside of the entity's reasonable control and responsibility.

3. Schedule of Fines or Fees. Unless otherwise provided by the Act, the Board may utilize the following classification table in determining and imposing administrative fines or fees on a school or agent:

Violation	**Fine or Fee**
Deceptive Trade or Sales Practice §§ 23-64-112(1)(k) and 23-64-123, C.R.S., and/or Board Rule VII.	$1000 minimum for each violation.
Operating after expiration date of certificate of approval, § 23-64-113(1)(a), C.R.S., and/or Board Rule IV.F.	$1000 minimum for violation and $50 each day in violation.
Operating without adequate Surety Coverage, § 23-64-121, C.R.S., and/or Board Rule IV.E.	$1000 minimum for violation and $50 each day in violation.
Offering Program/Courses without Board approval § 23-64-112(1)(c), C.R.S., and/or Rule III.B.1.	$500 minimum fine for each violation.
Unauthorized agent, § 23-64-111, C.R.S and/or Board Rule VI.	$500 minimum for violation and $50 per day in violation.
Failure to adhere to state refund policy upon student withdraw or termination, § 23-64-120, C.R.S., and/or Board Rule VIII.	1st violation: minimum $100; 2nd minimum $300; 3rd minimum $500, and each violation thereafter.
Unqualified instructional staff, § 23-64-112(1)(e), C.R.S., and/or Board Rule III.E.2.	1st violation: minimum $200; 2nd violation minimum $300; 3rd violation minimum $500 and each violation thereafter.
Failure to timely and adequately correct an on-site inspection deficiency and/or application/record review § 23-64-112, C.R.S.	1st Offense minimum $100 per violation; 2nd Offense minimum $300 per violation; 3rd Offense minimum $500 per violation, and each violation thereafter.
False statement about material fact in application, § 23-64-112, C.R.S., and/or Board Rule XI.	$500 minimum per violation

Failure to properly execute student enrollment agreement, § 23-64-126, C.R.S., and/or Board Rule III.H.	$200 minimum per violation
Any other violation of the Act, Rule or order of the Board.	$100 to $5000 per violation

4. Administrative Hearing. In lieu of paying the imposed fine or fee, the school or agent may request a hearing before an administrative law judge in accordance to the State Administrative Procedures Act. All final decisions of the Board regarding the issuance of fines or fees and any other form of disciplinary action as set forth in the Act, including administrative fines or fees, shall be in accordance to the State Administrative Procedures Act.

5. Payment of fines or fees. Unless the school or agent requests a hearing pursuant to the State Administrative Procedures Act, any fine or fee imposed pursuant to § 23-64-131, C.R.S., and this Rule shall be paid within 30 days of the date of the Notice of Fine or Fee. Any fine or fee imposed subsequent to an administrative hearing and final Board order shall be paid within 30 days of a final Board order. All fines or fees shall be paid electronically. All fines collected pursuant to this Rule shall be transferred to the State Treasurer, who shall credit the same to the State General Fund.

6. Failure to Pay a Fine or fee. Failure to pay an administrative fine or fee by its due date may result in the suspension or revocation of the school's certificate of approval or the agent's permit in accordance with the Act, the Rules and the State Administrative Procedures Act.

Editor's Notes

History

Rule II-F eff. 03/02/2009.

Entire rule eff. 03/31/2009.

Rule V.C. eff. 11/01/2010.

Entire rule eff. 12/10/2011.

Fee Schedule emer. rule eff. 11/06/2013.

Entire rule eff. 12/30/2013.

Fee Schedule eff. 03/02/2014.

Fee Schedule eff. 09/14/2014.

Fee Schedule, Rules IV. E. 1. b, XI. D. 1-3 eff. 01/31/2017.

Entire rule eff. 06/14/2018.

Entire rule eff. 12/15/2019.

Rule II.H emer. rule eff. 06/16/2020; expired 10/14/2020.

Rules I.E, I.P, I.GG, III.A.3, III.B.1, III.G.1.s-u, III.H.3.f, III.I.3, III.I.5, IV.D, IV.E.2, V.A.2, V.B.1, V.D.1, VI.E.1.e, IX.B, XI.A.6 eff. 04/01/2021. Rule III.B.8 repealed eff. 04/01/2021.

Rules I R, Fee Schedule, III A.1, III C.2, III E.2.b(2)-(3), III E.2.c(2), III G.1.v, III H.3.f, III I.3.e, III I.4.a(2), III I.5.a, IV E.3.d, IV E.7.b, IV E.11.c, V, V D.1.a, VII L, XI D.2(a), XI D.3 eff. 04/01/2022.

Rules I, II, III.B.1.a, III.B.6.g, III.E.2.a, III.E.2.e, III.F.2, III.H.3.h, III.I.4.b, III.I.5-6, IV.D.4, V.B.1.d, IX.B, XI.A.3, XI.D eff. 04/01/2023. Rule III.B.7 repealed eff. 04/01/2023.

Notice of Proposed Rulemaking

Tracking number

2023-00806

Department

1504 - Department of Higher Education

Agency

1504 - Higher Education Commission

CCR number

8 CCR 1504-9

Rule title

RULES FOR THE ADMINISTRATION OF THE COLORADO OPPORTUNITY SCHOLARSHIP INITIATIVE

Rulemaking Hearing

Date

01/16/2024

Time

02:00 PM

Location

Virtual

Subjects and issues involved

The rules are being updated to align with statutory changes and the COSI Advisory Board approval of the use of funds for administrative costs to operate programs.

Statutory authority

Authority: 23-3.3-1004(4), C.R.S.; HB: 14-1384

Contact information

Name

Cynthia Armendariz

Title

Managing Director

Telephone

3039742485

Email

cynthia.armendariz@dhe.state.co.us

DEPARTMENT OF HIGHER EDUCATION

Colorado Commission on Higher Education

RULES FOR THE ADMINISTRATION OF THE COLORADO OPPORTUNITY SCHOLARSHIP INITIATIVE

8 CCR 1504-9

Authority: 23-3.3-1004(4), C.R.S.; HB: 14-1384

0.0 Statement of Basis and Purpose

These rules are promulgated pursuant to the authority in sections 23-3.3-1004(4), 23-3.3-1006, and 23-3.3-1007 C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. C.R.S. Section 23-3.3-1001 et seq. C.R.S. authorizes the Colorado Opportunity Scholarship Initiative to award scholarships or grants to students, state agencies, nonprofit organizations, and public institutions of higher education committed to ensuring that every Colorado student has the support needed to enter a postsecondary opportunity, persist and succeed, and enter his or her desired position in the workforce. These rules shall establish criteria for eligibility of students and community partner programs to participate in the initiative.

1.0 Definitions

1.01 “Administrative Costs” means administrative expenses associated with administering the grant.

1.0~~2~~1 "Application completion rate" means the percentage of students enrolled in a high school operated by a local education provider who complete the student aid applications in a single school year.

1.0~~2~~3 “Allocation” means the amount of money appropriated to the Initiative that the Board determines should be made available to an IHE in accordance with HB21-1330.

1.0~~4~~3 “American Rescue Plan” means the federal “H.R. 1319—117th Congress: American Rescue Plan Act of 2021,” Pub. L. 117-2 available electronically at: https://www.congress.gov/bill/117th-congress/house-bill/1319/text. **The U.S. Department of Education is located at 1244 Speer Blvd., Ste. 310, Denver, CO 80204. The Colorado Department of Higher Education maintains a copy available for public inspection at 1600 Broadway, Ste. 2200, Denver, CO 80202, during regular business hours. Upon request, the Department will provide an electronic copy for free or a printed copy for a reasonable per page charge.**

1.054 "Board" means the Colorado Opportunity Scholarship Initiative Advisory Board created in section 23-3.3-1004, C.R.S.

1.065 "Cost of attendance" means the student's cost of attending a public or private institution of higher education that is determined by the institution of higher education based on federal and Commission policy, and includes tuition, fees, room, board, books, supplies, transportation, and other allowable expenses.

1.067 "Department" means the Colorado Department of Higher Education created pursuant to section 24-1-114, C.R.S.

1.087 "Designated student" means undergraduate, in-state students whose expected family contribution did not exceed 250% for the maximum Pell-eligible expected family contribution for a federal Pell grant.

1.098 "Direct financial assistance" means the portion of an allocation that a public institution of higher education will distribute directly to eligible students in the form of scholarships, financial assistance for the cost of attendance, and other direct student financial incentives or assistance.

1.1009 "Eligible student" means~~, at the time of re-engagement,~~ an undergraduate in-state student who:

1.1009.1 Earned some postsecondary credits from a public or private institution of higher education but did not complete a credential requiring thirty credits or more ~~the credits needed for a postsecondary credential or degree~~ before deciding not to enroll for two or more consecutive semesters; or

1.1009.2 Was admitted to a public institution of higher education as a first-time student for the 2019-20 or 2020-21 academic year but did not enroll at a public or private institution of higher education for the 2020-21 academic year.

1.110 "Expected family contribution" means the amount of money, calculated based on federal policy, that a student's family is expected to contribute to the student's cost of attendance at a public or private institution of higher education.

1.121 "Financial assistance" means money awarded to a student based on the student's cost of attendance at a public or private institution of higher education.

1.132 "Grant program" means the student aid applications completion grant program created in section 5.

1.143 "Indirect financial assistance" means money that will be used by a public institution of higher education for student support services.

1.154 “Initiative” means the Colorado Opportunity Scholarship Initiative created in section 23-3.3.-1003, C.R.S.

1.165 "Local education provider" means a school district organized pursuant to sections 22-30-101 et seq., C.R.S., a charter school authorized by a school district pursuant to sections 22-30.5-101 et seq., C.R.S., a charter school authorized by the state charter school institute pursuant to sections 22-30.5-501 et seq., C.R.S., or a board of cooperative services that operates a high school created pursuant to sections 22-5-101 et seq., C.R.S.~~.~~

1.167 “Nonprofit organization” means a tax-exempt charitable or social welfare organization operating under section 501(c)(3) or 501(c)(4) of title 26 of the United States Code, the federal “Internal Revenue Code of 1986”, as amended, available electronically at https://www.govinfo.gov/app/details/USCODE-2018-title26/USCODE-2018-title26-subtitleA-chap1-subchapF-partI-sec501. The U.S. Internal Revenue Service is located at 1999 Broadway, Denver, CO 80202. The Colorado Department of Higher Education maintains a copy available for public inspection at 1600 Broadway, Suite 2200, Denver, CO 8020, during regular business hours. Upon request, the Colorado Department of Higher Education will provide an electronic copy for free or a printed copy for a reasonable per page charge.

1.178 "Private higher education institution" means a private institution of higher education as defined in section 23-18-102(9), C.R.S.

1.189 "Public higher education institution" means a state institution of higher education as defined in section 23-18-102 (10)(a), C.R.S., a local district college created pursuant to section 23-71-101 et seq., C.R.S., or an area technical college as defined in section 23-60-103, C.R.S.

1.1920 “SAP” means the student assistance plan that a public institution of higher education develops as part of its application to the Initiative to describe how the institution will spend the amount allocated to it pursuant to HB21-1330.

1.201 "Student aid applications" means the free application for federal student aid and the Colorado application for student financial aid.

1.22 “Undergraduate” is defined as a student who has not yet received a bachelor’s degree.

1.23 “Work-based learning” means learning that occurs, in whole or in part, in the workplace that provides youth and adults with hands-on, real-world experience and training for skills development. “Work-based learning” includes activities such as job shadowing, internships, externships, pre-apprenticeships, apprenticeships, residencies, and incumbent-worker training.

1.24 “Youth mentorship organization” means a community-based organization that provides mentorship services to youth who reside in communities that were historically and are

currently negatively impacted by structural and systemic design, and consequently have no or limited access to quality mentorship services.

2.0 Grant Awards for Matching Student Scholarships

2.01 Initiative grant awards for matching student scholarships are intended to:

2.01.1 Generate greater availability of scholarship dollars for Colorado students with an Expected Family Contribution of less than one hundred percent of the annual federal Pell grant award and students with an Expected Family Contribution between one hundred percent and two hundred fifty percent of the annual federal Pell grant award;

2.01.2 Promote scholarship programs that include student support services to help students persist and complete a certificate or degree in a timely fashion;

2.01.3 Encourage communities to create or leverage foundations that assist their students with covering the costs of higher education and motivate students to graduate and go on to pursue a degree or credential; and

2.01.4 To align tuition assistance programs with workforce development programs.

2.02 Award of initiative grants for matching student scholarships

2.02.1 The initiative shall approve and publicize the total funds available for matching student scholarship grants during each fiscal year.

2.02.2 The initiative shall distribute grants for matching student scholarships to entities committed and able to provide matching funds and not directly to students.

2.02.3 The initiative will award grants for matching student scholarships in Board approved categories during each fiscal year, including but not limited, to: County-based grants, Institution of Higher Education grants; and Workforce Development grants.

2.02.4 The initiative shall require all recipients of matching student scholarship grants to consider the following criteria when determining a student applicant's eligibility to

receive tuition assistance: courses of study; commitment to academic achievement; work experience; community involvement; and extracurricular activities. Additional criteria for eligibility of student applicants to receive tuition assistance may be determined and published annually in the initiative's request for proposal for matching student scholarship grants.

2.02.5 Other Permitted Uses of Matching Funds

2.02.5.1 When, from time to time, the initiative is approached by the State or funders interested in leveraging ~~matching~~ dollars for scholarship programs outside the funding streams outlined above, the Board may approve ~~agreements~~ programs that align with the initiative, the Colorado Department of Higher Education, and State goals. ~~that outline the matching ratio, scope of program, and annual commitment.~~

2.02.5.2 Whenever possible, staff will design scholarship projects that expand upon student support grant programs that have been awarded by the initiative.

2.03 Proposal evaluation and review process

2.03.1 Proposals will be reviewed by the initiative staff and Board to ensure they contain all components required by the initiative's request for proposal for matching student scholarship grants. Competitive proposals will be reviewed by the cross-department team.

2.03.2 Each proposal will be scored and reviewed according to a process determined by the Department.

2.03.3 Initiative staff will organize and review all proposals and prepare for review by the cross-department team.

2.03.4 The cross-department team will review all competitive proposals and determine recommended grant recipients and award amounts.

2.03.5 The initiative staff will present final recommendations to the Board.

2.03.6 The Board will make final decisions regarding grant recipients and award amounts.

2.03.7 Entities chosen as matching student scholarship grant recipients will be contacted and notified of grant award amounts.

2.04 The initiative will execute grant agreements with all entities chosen to receive matching student scholarship grants.

2.04.1 All grant agreements shall include the following provisions:

2.04.1.1 Matching funds will be provided on a 1:1 basis for every dollar brought to the table by approved matching partners, except in cases where the board has approved a different ratio through official policy

2.04.1.2 Once awarded, initiative grant funds will remain in the initiative's account until such time as they are to be disbursed for the benefit of individual students receiving scholarships under a recognized initiative program.

2.04.1.3 Designated Matching Student Scholarship awards and matching funds must only be used for financial assistance awarded to Colorado students with an expected family contribution of less than one hundred percent of the annual federal Pell grant award and students with expected family contribution between one hundred percent and two hundred fifty percent of the annual federal Pell grant award.

2.04.1.4 To the extent practicable, grants of tuition assistance must be awarded to students representing rural and urban areas of the state and to students attending public vocational schools, community colleges, four-year institutions of higher education, and research institutions.

2.04.1.5 ~~Agreements will include criteria regarding reporting requirements of each grant recipient.~~To the extent practicable, grant and scholarship money may be used for work-based learning.

2.04.1.6 Agreements will include criteria regarding reporting requirements of each grant recipient.

2.04.1.7. Grant recipients are allowed to use up to 5% of the total grant (including the match) for administrative costs.

3.0 Grant Awards to Community Partner Programs

3.01 Initiative grant awards to community partner programs are intended to:

3.01.1 Promote existing student success programs supporting students in postsecondary degree and certificate completion;

3.01.2 Increase the availability of programs and infrastructure, particularly in rural and underserved communities; and

3.01.3 Align student success best practices throughout the state to ensure that all students have access to services in an equitable way.

3.02 Award of initiative grants to community partner programs

3.02.1 Nonprofit organizations, governmental entities and community partnerships focused on student success activities and student support services shall be eligible to receive community partner program grant funds.

3.02.2 Student support services shall include:

3.02.2.1 Postsecondary preparatory services;

3.02.2.2 Career and college support professional's salaries and benefits;

3.02.2.3 Student services that address remediation, graduation, retention, and drop out/stop out prevention;

3.02.2.4 Professional development;

3.02.2.5 Program development;

3.02.2.6 ~~Indirect~~ Administrative costs ~~(~~up to 5%~~)~~;

3.02.2.7 Travel;

3.02.2.8 Consulting services; and

3.02.2.9 Program supplies and equipment.

3.03 Criteria used to evaluate proposals for community partner program grants

3.03.1 Proposals will be evaluated in accordance with the following statutory criteria, pursuant to section 23-3.3-1001 et seq. C.R.S.:

3.03.1.1 Reductions in remediation rates and associated costs;

3.03.1.2 Increases in graduation rates;

3.03.1.3 Reductions in average time required to earn a degree;

3.03.1.4 Increases in student retention rates;

3.03.1.5 Reductions in disparities between the academic achievements of certain student populations based on demographic, geographic, and economic indicators;

3.03.1.6 Adoption of best practices for student support services;

3.03.1.7 Implementation of postsecondary and professional competencies;

3.03.1.8 Fulfillment of local workforce needs;

3.03.1.9 Reductions in student loan debt;

3.03.1.10 Improvements in tuition affordability; and

3.03.1.11 Improvements in students' access to Federal grant programs and other Federal sources of support for postsecondary students.

3.03.2 Proposals will be also be evaluated in accordance with the following additional criteria:

3.03.2.1 Scalability and replicability of program;

3.03.2.2 Affordability and cost of implementation;

3.03.2.3 Plans for sustainability and institutionalization;

3.03.2.4 Alignment with Key Performance Measures outlined in the initiative's Strategic Plan; and

3.03.2.5 Alignment with Colorado Commission on Higher Education Strategic Goals pursuant to section 23-1-108(1.5), C.R.S.

3.04 Proposal evaluation and review process

3.04.1 Proposals from community partner programs will be reviewed by the initiative staff, Board and a cross-department team to ensure they contain all components required by the initiative's request for proposal for community partner program grants.

3.04.2 Each proposal will be scored and reviewed according to a process determined by the Department.

3.04.3 Initiative staff will organize and review all scores and categorize proposals by program type to prepare for review by the cross-department team.

3.04.4 The cross-department team will review all scores and determine recommended grant recipients and award amounts,

3.04.5 The initiative staff will present final recommendations to the Board.

3.04.6 The Board will make final decisions regarding grant recipients and award amounts.

3.04.7 Community partner programs chosen as grant recipients will be contacted and notified of grant award amounts.

3.05 The initiative will execute grant agreements with all community partner programs chosen as grant recipients.

3.06 Grants will be awarded pursuant to the terms of the mutually executed grant agreements. However, grant funding beyond the first year will be contingent upon annual appropriations by the general assembly and the discretion of the initiative. Community partner programs chosen as grant recipients will be eligible for continued funding for a second year upon successful demonstration of the following:

3.06.1 Submission of all required evaluation materials;

3.06.2 Adequate progress toward successful attainment of annual objectives;

3.06.3 Completion of a program development report after the first year of the grant award to demonstrate fidelity to proceed with the second year; and

3.06.4 Completion of a satisfactory budget for the second year.

4.0 Use of American Rescue Plan funds to support student success in obtaining postsecondary credentials

4.01 The Board shall calculate allocations from American Rescue Plan funds to public institutions of higher education as follows:

4.01.1 The first half of an institution's allocation shall be based on that institution's headcount enrollment for the 2019-20 academic year of designated students.

4.01.2 The second half of an institution's allocation shall be based on that institution's full-time equivalent enrollment for the for the 2019-20 academic year of designated students.

4.01.3 The Board shall separately adjust the first and second half of an institution's allocation based on the following characteristics of that institution:

4.01.3.1 Location in a rural area.

4.01.3.2 Total headcount enrollment.

4.01.3.3 Characteristics unique to area technical colleges

4.02 The Board shall request and public institutions of higher education may submit student application plans as follows:

4.02.1 As soon as practicable, the Board shall publish a request for SAPs.

4.02.2 To receive an allocation, an institution must submit a student-centered SAP to the Board.

4.02.3 Each SAP must describe the intended use of the allocation to support eligible students and specify:

4.02.3.1 The amount of the allocation requested.

4.02.3.2 The timeline for receiving the allocation or portions thereof over the 2021-22 and 2022-23 academic years, and any additional use of funds expected thereafter between 2023- 2024 and 2025-2026 academic years.

4.02.3.3 Using the data collected by the institution during SAP pre-work, the population of eligible students that the plan is designed to support, which should focus on disproportionately impacted student populations.

4.02.3.4 The respective percentages of the allocation that will be used for direct and indirect financial assistance.

4.02.3.5 Using the program budget and narrative template provided in the published request for SAPs, an explanation as to how the institution will use the allocation to support eligible students through indirect financial assistance in alignment with the initiative's Community Partner Program model on campus, through a subgrant with an initiative partner or any combination therein, as set forth in 8 CCR 1504-9 section 3.0.

4.02.3.6 Using the statement of work template provided in the published request for SAPs, the specific, measurable goals that the institution expects to achieve through the SAP, which must include:

4.02.3.6.1 Increasing retention of the identified population of eligible students.

4.02.3.6.2 Increasing enrollment, persistence, and completion for said students.

4.02.3.6.3 For institutions other than area technical colleges, decreasing student debt for said students.

4.02.3.5 The metrics and data that the institution will use to measure the degree of success in meeting the identified goals in alignment with the

Initiative's existing annual reporting and data collection and as set forth in 8 CCR 1504-9 section 4.0.

4.2.4 All SAPs are subject to review and approval of the Board.

4.03 Board review and approval of SAPs submitted by public institutions of higher education

4.03.1 The Board shall review each SAP and distribute all or a portion of an institution's allocation as soon as practicable after the Board approves the SAP. An institution may receive up to 100% of its allocation over two academic years beginning in the 2021-22 academic year.

4.03.2 Before approving an SAP, the Board shall consider:

4.03.2.1 The respective percentages of the allocation that will be used for direct and indirect financial assistance, with the intent that a greater percentage is used for direct financial assistance.

4.03.2.2 The population of eligible students that the SAP is designed to support, including traditional and nontraditional students and the degree to which the SAP focuses on disproportionately impacted student populations.

4.03.2.3 The speed and efficiency with which the institution expects to distribute its allocation.

4.03.2.4 The quality of the SAP, including:

4.03.2.4.1 The rigor of programming and quality of the evaluation measures.

4.03.2.4.2 The likelihood that the institution will meet the goals specified in the SAP and that the SAP will result in significant increases in eligible student enrollment, persistence, and completion.

4.03.2.4.3 For public institutions of higher education other than area technical colleges, the likelihood that the SAP will result in significant decreases in student debt.

4.03.3 Before approving an SAP, the Board may provide feedback to the submitting institution, including suggested changes, and require the institution to revise and resubmit the plan.

4.04 Reporting obligations of public institutions of higher education

4.04.1 By August 1,2022, each institution that received an allocation shall submit a draft report to the Board that includes:

4.04.1.1 A detailed explanation of the amount of an allocation that the institution spent during the 2021-22 academic year, including the number of eligible students served, the amount of direct financial assistance, and support services provided to eligible students.

4.04.1.2 An explanation of the prior year's progress in relation to the institution's statement of work, budget expenditures, and student data in alignment with the initiative's reporting requirements;

4.04.1.3 Any other data that demonstrates the institution's progress toward and achievement of the goals of assisting eligible students to enroll, persist, and complete postsecondary credentials and, for public institutions of higher education other than area technical colleges, decrease student debt;

4.04.1.4 Any other data related to the use of the allocation that the board requests; and

4.04.1.5 If any portion of the allocation remains undistributed, a request that the Board distribute the remainder and a description of any revisions to the institution's SAP for spending the remainder, including an updated statement of work and budget for the following year.

4.04.2 At the end of the 2021-22 academic year, by September 1, each public institution of higher education shall submit a final report to the board after consultation with the Initiative staff.

4.04.3 The Board shall review each institution's report and determine the institution's success in achieving the goals identified in the institution's SAP.

4.04.4 For each institution that requests the distribution of the remainder of the institution's allocation.

4.04.4.1 The Board shall review the institution's SAP, including any revisions;

4.04.4.2 Based on the criteria specified in 4.03, the Board may provide feedback and require changes to the plan before distributing the remainder to the institution for the 2022-23 academic year.

4.04.4.3 An institution that implements an SAP during the 2022-23 academic year and that continues to implement the SAP in subsequent academic years shall submit an annual draft report to the Board by August 1, and a final by September 1, as it pertains to each academic year in which the SAP continues to be implemented.

4.05 Reporting obligations of the Board

4.05.1 By December 1, 2022, and by December 1 each year thereafter so long as the Board continues to receive reports pursuant to Rule 4.04, the director of the initiative shall submit a summary of the Rule 4.04 reports to the Joint Budget Committee and to the Education Committees of the Senate and the House of Representatives.

4.05.2 The initiative's summary must include for each reporting institution:

4.05.2.1 The amounts allocated and distributed;

4.05.2.2 The amount spent on direct financial assistance, the amount spent on indirect financial assistance, the types of direct financial assistance provided, and they types of indirect financial assistance provided;

4.05.2.3 The number of eligible students who re-enrolled during the academic years when the institution's SAP was implemented;

4.05.2.4 The postsecondary credentials awarded to eligible students who received assistance through the institution's SAP; and

4.05.2.5 Any additional information the Board deems useful in determining the degree to which American Rescue Plan funds were successfully spent to increase eligible student enrollment, persistence, and completion and decrease student debt.

5.0 Student aid applications completion grant program

5.01 The student aid applications completion grant program is intended to assist local education providers in increasing the number of students who complete of student aid applications before graduating from high school.

5.02 To be eligible for the grant program a local education provider must require students to complete the student aid applications before graduation unless the requirements is waived under conditions described by the local education provider.

5.03 A local education provider that seeks to participate in the grant program must submit an application to the Board.

5.03.1 The application must include:

5.03.1.1 The student aid application completion rate for high schools operated by the local education provider for the school year immediately preceding the application;

5.03.1.2 The local education provider's goal for increasing the student aid application completion rate;

5.03.1.3 The conditions under which the local education provider may waive the requirement that a student complete the student aid applications before graduating from high school;

5.03.1.4 Whether the local education provider is partnering or intends to partner with a community-based nonprofit organization or an institution of higher education to support students in completing the student aid applications;

5.03.1.5 How the local education provider intends to use the money received through the grant program to increase the student aid application completion rate.

5.04 The Board shall review the submitted grant applications and, subject to availability, award the grants from money appropriated pursuant to section 23-3.3-1005(7), C.R.S.

5.05 In awarding grants, the Board shall prioritize applicants that partner with one or more community-based nonprofit organizations or institutions of higher education.

5.06 Before awarding grants, the Board shall consult with the Department of Education.

5.07 On or before August 1, immediately following the completion of a school year in which a local education provider received a grant, the provider shall submit a report to the Board specifying how the grant money was used to increase the student aid application completion rate and whether and to what degree the rate increased from the preceding school year.

5.08 On or before November 1, 2022, and on or before November 1 for each year in which a local education provider submits a report, the Board shall include in the annual report prepared pursuant to section 23-3.3-1004(4)(c), C.R.S., a summary of the reports received from the providers. The Board may include in the summary recommendations concerning continuation of and changes to the grant program.

6.0 Youth Mentorship Assistance Grant Pilot Program

6.01 The Youth Mentorship Assistance Grant Pilot Program is intended to provide financial assistance to a student who provides mentorship services to defray the cost of the student's attendance at a public institution of higher education.

6.02 The funds will be used as payments for service to the student in the form of scholarships, which will be paid directly to the public institution of higher education at the end of each semester.

6.03 Non-profit organizations, state entities, and community partnerships committed to increasing the availability of scholarship dollars for Colorado students and are committed to adhering to the grant policies are eligible to apply.

6.03.1 The youth mentorship organization shall have a policy and procedure requiring a state and national fingerprint-based criminal history record check utilizing the records of the Colorado Bureau of Investigation and the Federal Bureau of Investigation of all prospective eligible student-mentors, volunteers, and employees.

6.03.2 The youth mentorship organization shall not permit prospective eligible student-mentors, volunteers, or employees to serve the organization if they have been convicted of, entered a plea of guilty or nolo contendere to, or received a deferred sentence for:

6.03.2.1

aa felony crime involving unlawful sexual behavior or unlawful behavior-involving children;

6.3.2.2

6.3.2.3 a felony crime, the underlying factual basis of which has been found by the court on the record to involve domestic violence;

6.3.2.4

6.3.2.5 a misdemeanor crime involving unlawful sexual behavior or unlawful behavior involving children; or

6.3.2.6 a misdemeanor crime, the underlying factual basis of which has been found by the court on the record to involve domestic violence.

6.3.3 The Board shall select one approved youth mentorship organization focused on serving one or more of the following communities:

6.3.4.1 a youth mentorship organization for youth who are lesbian, gay, bisexual, transgender, or queer;

6.3.4.2 a youth mentorship organization for youth who have a physical, mental, or developmental disability;

6.3.4.3 a youth mentorship organization for youth of color;

6.3.4.4 a youth mentorship organization for youth who are justice involved.

6.3.5 To the extent possible, the Board shall select approved youth mentorship programs that serve youth who reside in rural and urban areas of Colorado.

6.3.6 The grant recipient shall submit an annual report to the initiative that includes:

6.3.6.1.1 A description of the approved youth mentorship organization, including its location, the services it provides, demographic information of the mentees it serves, and summaries of the program's impact on the mentees served; except that any summary must not disclose the

identity of a mentee or include personal information that could disclose the identity of a mentee;

6.3.6.1.2 The number of eligible student-mentors who provided mentorship services to the approved youth mentorship organization during the preceding state fiscal year, in total and disaggregated by race, ethnicity, gender identity, and the qualified public institution of higher education in which the eligible student-mentors are enrolled; and

6.3.6.1.3 The amount of money received by the approved youth mentorship organization from the program, in total and disaggregated by payments to public institutions of higher education.

6.4 Eligible student mentors must meet the eligibility criteria listed. The grant recipients may add additional criteria. Eligible student mentors must:

6.4.1 Complete the Free Application for Student Aid (FAFSA) or Colorado Application for Student Financial Aid (CASFA) application annually;

6.4.2 Meet the financial need threshold of zero to two hundred and fifty percent of Pell eligibility;

6.4.3 Be an undergraduate student;

6.4.4 Be a Colorado resident for tuition purposes (including ASSET students under C.R.S. § 23-7-110); -

6.4.5 Be enrolled in a qualified public institution of higher education for the duration of the mentorship;

6.4.6 Satisfy all eligibility requirements necessary to be a student mentor through the approved mentorship organization, including completing the fingerprint-based criminal history record check;

6.4.7 Provide evidence of program compliance during the duration of the mentorship.

6.5 The Board will prioritize consideration for eligible student-mentors who demonstrate the greatest financial assistance needs.

6.6 If a student-mentor does not earn the amount of allotted financial assistance for their cost of attendance the program, the Board will consider any options to obtain repayment of such financial assistance.

6.7 On or before December 1, 2024, and on or before December 1 for each year of the grant program, the Initiative shall submit a report to the education committees of the Senate and House of Representatives. The report shall be prepared pursuant to section 23-3.3-1010(8)(b), C.R.S.

76.0 Evaluation of the effectiveness of the initiative in improving higher education outcomes in the state

76.01 The initiative shall use the following criteria for evaluating the effectiveness of the initiative in improving higher education outcomes in the state:

76.01.1 Reductions in remediation rates and associated costs;

76.01.2 Increases in high school graduation and certificate and degree completion rates;

76.01.3 Reductions in average time required to earn a certificate or degree;

76.01.4 Increases in student retention rates;

76.01.5 Reductions in disparities between the academic achievements of certain student populations based on demographic, geographic, and economic indicators;

76.01.6 Adoption of best practices for student support services;

76.01.7 Fulfillment of local workforce needs;

76.01.8 Reductions in student loan debt;

76.01.9 Improvements in tuition affordability; and

7.01.106.01.10 Improvements in students' access to federal grant programs and other federal sources of support for postsecondary students.

76.02 The initiative shall require entities in receipt of grant funds to provide any information needed to evaluate the initiative's impact on higher education outcomes in the state according to the above criteria.

Notice of Proposed Rulemaking

Tracking number

2023-00800

Department

1507 - Department of Public Safety

Agency

1507 - Colorado State Patrol

CCR number

8 CCR 1507-28

Rule title

PORT OF ENTRY RULES FOR COMMERCIAL MOTOR CARRIER SIZE, WEIGHT AND CLEARANCE

Rulemaking Hearing

Date

01/30/2024

Time

01:00 PM

Location

Carrell Hall, Bldg. 100, 15165 S. Golden Rd., Golden, CO., 80401

Subjects and issues involved

Under Section 42-8-104 (1), CRS, the Chief of the CSP has the authority to promulgate rules necessary to implement the enforcement of applicable statutes and regulations concerning commercial motor carriers, owners, and operators through the operation of Port of Entry weigh stations on public highways within Colorado. Amendments are being proposed to 8 CCR 1507-28:

*Updating provisions relating to the appeal of SRP applications and permits arising out of a review from the OLLS.
*Updating definitions applicable to these rules and references to the Port of Entry necessary in response to its recent reorganization within the CSP.
*Updating verbiage throughout the rules to improve their overall clarity and readability; and
*Correcting minor errors in grammar, editing, spelling, formatting, and updating references to online and internal agency resources throughout.

Statutory authority

Section 42-8-104, CRS

Contact information

Name

Deborah Jones

Title

Deputy Director

Telephone

7197600832

Email

deborahl.jones@state.co.us

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

DEPARTMENT OF PUBLIC SAFETY
COLORADO STATE PATROL – PORT OF ENTRY

PORT OF ENTRY RULES FOR COMMERCIAL MOTOR CARRIER SIZE, WEIGHT AND CLEARANCE

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to §42-8-104 (1), CRS, the Chief of the Colorado State Patrol has the authority to promulgate rules necessary to implement the enforcement of applicable statutes and regulations concerning commercial motor carriers, owners, and operators through the operation of Port of Entry weigh stations on public highways within Colorado.

Amendments are being proposed to 8 CCR 1507-28:

- Updating provisions relating to the appeal of SRP applications and permits arising out of a review from the OLLS.
- Updating definitions applicable to these rules and references to the Port of Entry necessary in response to its recent reorganization within the Colorado State Patrol.
- Updating verbiage throughout the rules to improve their overall clarity and readability; and
- Correcting minor errors in grammar, editing, spelling, formatting, and updating references to online and internal agency resources throughout.

It has been declared by the General Assembly that the safe operation of commercial vehicles is a matter of statewide concern. The General Assembly has also declared that ensuring compliance with state law and ensuring the equal distribution of fee payments, licenses, and taxes on motor carriers and the owners and operators of motor vehicles is an important state interest. The non-implementation of rules to carry out the purpose of the statutes would be contrary to public health, peace, safety, and welfare. For these reasons, it is necessary that these proposed amendments be adopted.

_____ _____

Colonel Matthew C. Packard
Colorado State Patrol

Date of Adoption

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

DEPARTMENT OF PUBLIC SAFETY
COLORADO STATE PATROL – PORT OF ENTRY

PORT OF ENTRY RULES FOR COMMERCIAL MOTOR CARRIER SIZE, WEIGHT AND CLEARANCE

POE 1. AUTHORITY TO ADOPT STANDARDS AND SPECIFICATIONS. The Chief is authorized by the provisions of §42-8-104 (1), CRS, to adopt rules and regulations deemed necessary to enforce applicable statutes and regulations regarding commercial motor carriers, owners, and operators through the operation of Port of Entry weigh stations on public highways within Colorado.

POE 2. GENERAL DEFINITIONS. Concerning these rules, the following definitions are applicable unless otherwise specified:

2.1. **AFFECTED POE:** A permanent weigh station that is identified within a Special Revocable Permit (SRP). An SRP may affect more than one POE weigh station.

2.2. **ALTERNATIVE FUEL:** Includes Compressed Natural Gas (CNG), propane, ethanol, or any mixture of ethanol containing 85% or more ethanol by volume with gasoline, electricity, or other fuels, including clean diesel and reformulated gasoline so long as these other fuels make comparable reductions in carbon monoxide emissions and brown cloud pollutants as determined by the air quality control commission.

2.3. **APPURTENANCE:** A non-cargo bearing piece of equipment that is affixed or attached to a motor vehicle or trailer and is used for a specific purpose or task. Includes awnings, support hardware, and retractable equipment. Does not include any item or equipment that is temporarily affixed or attached to the exterior of a motor vehicle to transport such vehicle.

2.4. **CARGO:** The goods carried as freight by a commercial vehicle.

2.5. **CDOR:** Colorado Department of Revenue.

2.6. **CDOT:** Colorado Department of Transportation.

2.7. **CDPS:** Colorado Department of Public Safety.

2.8. **CHIEF:** The Chief of the Colorado State Patrol, or his or her designees, unless otherwise specified.

2.9. **COMMERCIAL MOTOR VEHICLE INFORMATION TECHNOLOGY (CMVIT):** Technology and deployments THAT ~~which~~ enable the effective and accurate gathering of CMV-related data through fixed, mobile, and virtual weighing operations.

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

2.10. **COOPR:** The CDOT Colorado Oversize/Overweight Permitting and Routing ~~s~~System.

2.11. **CSP:** Colorado State Patrol.

2.12. **GCW:** Gross Combined Weight.

2.13. **GCWR:** Gross Combined Weight Rating.

2.14. **GVW:** Gross Vehicle Weight.

2.15. **GVWR:** Gross Vehicle Weight Rating.

2.16. **HIGH-RISK MOTOR CARRIER:** A non-passenger carrier that:

2.16.1. Has a ranking at or above the 90th percentile in the unsafe driving, hours of service (HOS) compliance, vehicle maintenance, or crash indicator Behavior Analysis Safety Improvement Categories (collectively referred to as "BASICs") for two or more consecutive months as reported by information received by the FMCSA; and

2.16.2. Has not received an onsite investigation in the previous 18 months for property-carrying motor carriers or in the previous 12 months for passenger-carrying motor carriers.

2.17. **OVER-THE-ROAD BUS:** A bus characterized by an elevated passenger deck located over a baggage compartment and typically operated on the interstate highway system or on roads previously designated as making up the federal-aid primary system.

2.18. **OSB:** THE COLORADO STATE PATROL OPERATIONAL SERVICES BRANCH. ~~**PERMIT HOLDER:** A carrier, owner, or operator to whom a permit is issued is a permit holder. Permit holders are responsible for any violations received by vehicle operators who operate vehicles affected by a permit on behalf of the permit holder.~~

2.19. **PERMIT HOLDER:** A carrier, owner, or operator to whom a permit is issued is a permit holder. Permit holders are responsible for any violations received by vehicle operators who operate vehicles affected by a permit on behalf of the permit holder. ~~**PORT OF ENTRY (POE) OFFICER:** A law enforcement officer and a uniformed member of the CSP who is not a trooper nor a civilian member. The scope of authority and the duties of a POE officer are described within §42-8-104 (2), CRS, and also as discussed within these rules.~~

2.20. **PORT OF ENTRY (POE) OFFICER:** A law enforcement officer and a uniformed member of the CSP who is not a trooper nor a civilian member. The scope of authority and the duties of a POE officer are described within §42-8-104 (2), CRS, and ~~also~~ as discussed within these rules.– ~~**PROBATIONARY SPECIAL REVOCABLE PERMIT:** An SRP that may be issued for a period of 12 months or less to a carrier, owner, or operator who is:~~

~~**2.20.1.** Determined an eligible, but unsatisfactory SRP applicant following review of their application, and violation, safety, and/or port clearance records; or~~

~~**2.20.2.** An SRP permit holder applying for a new SRP following the revocation of a prior SRP.~~

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

2.21. **PROBATIONARY SPECIAL REVOCABLE PERMIT:** An SRP that may be issued for a period of 12 months or less to a carrier, owner, or operator who is:

2.21.1. Determined an eligible, but unsatisfactory SRP applicant following review of their application, and violation, safety, and/or port clearance records; or

2.21.2. An SRP permit holder applying for a new SRP following the revocation of a prior SRP.

~~**REGULARLY SCHEDULED ROUTE:** A route provided to the CSP POE by an applicant for an SRP. Factors considered in whether the route traveled by an SRP applicant is regular include times or places of repeated normal departure, arrival, delivery, and/or loading activity. To be eligible for an SRP, a regularly scheduled route provided by an applicant to the CSP POE must come within five (5) road miles of a permanent weigh station not directly located or along the regular route provided.~~

2.22. **REGULARLY SCHEDULED ROUTE:** A route provided to the CSP POE by an applicant for an SRP. Factors considered in whether the route traveled by an SRP applicant is regular include times or places of repeated normal departure, arrival, delivery, and/or loading activity. To be eligible for an SRP, a regularly scheduled route provided by an applicant to the CSP POE must come within five (5) road miles of a permanent weigh station not directly located or along the regular route provided. ~~**SINGLE AXLE:** All wheels, whose centers may be included within two (2) parallel transverse vertical planes not more than 40 inches apart, extending across the full width of the vehicle.~~

2.23. **SINGLE AXLE:** All wheels, whose centers may be included within two (2)-parallel transverse vertical planes not more than 40 inches apart, extending across the full width of the vehicle. ~~**SINGLE AXLE WEIGHT:** The total weight transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes not more than 40 inches apart, extending across the full width of the vehicle.~~

2.24. **SINGLE AXLE WEIGHT:** The total weight transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes not more than 40 inches apart, extending across the full width of the vehicle. ~~**SPECIAL REVOCABLE PERMIT (SRP):** A PERMIT THAT Wwaives the requirement of §42-8-105 (1), CRS, for a period of 36 months or less to seek and obtain clearance at a POE weigh station that is not directly located on a carrier's or operator's regularly scheduled route. Eligibility for an SRP is based, partly, on the applicant's or permit holder's safety record and "BASICs" scores reported by the Federal Motor Carrier Safety Administration (FMCSA).~~

2.25. **SPECIAL REVOCABLE PERMIT (SRP):** A PERMIT THAT ~~W~~waives the requirement of §42-8-105 (1), CRS, for a period of 36 months or less to seek and obtain clearance at a POE weigh station that is not directly located on a carrier's or operator's regularly scheduled route. Eligibility for an SRP is based, partly, on the applicant's or permit holder's safety record and "BASICs" scores reported by the Federal Motor Carrier Safety Administration (FMCSA). ~~**SPECIALIZED AUTOMOBILE TRANSPORTER:** A stinger-steered vehicle combination consistent with the definition provided within §42-4-504 (4.5) (C) (3), CRS, designed and used specifically for the transport of assembled~~

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

~~highway vehicles, including truck camper units. A specialized automobile transporter is designed to carry vehicles on the power unit behind the cab or an over-cab rack.~~

2.26. **SPECIALIZED AUTOMOBILE TRANSPORTER:** A stinger-steered vehicle combination consistent with the definition provided within §42-4-504 (4.5) (C) (3), CRS, designed and used specifically for the transport of assembled highway vehicles, including truck camper units. A specialized automobile transporter is designed to carry vehicles on the power unit behind the cab or an over-cab rack. ~~**TANDEM AXLE:** Two or more consecutive axles, the centers of which may be included between parallel vertical planes, spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle, all of which are in contact with the ground.~~

~~**2.26.1.** If only one of a set of multiple axles of a motor vehicle is in contact with the ground, the configuration is not a tandem axle until it is used as such.~~

2.27. **TANDEM AXLE:** Two or more consecutive axles, the centers of which may be included between parallel vertical planes, spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle, all of which are in contact with the ground. ~~**TANDEM AXLE WEIGHT:** The total weight transmitted to the road by two (2) or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.~~

2.27.1. If only one of a set of multiple axles of a motor vehicle is in contact with the ground, the configuration is not a tandem axle until it is used as such.

2.28 **TANDEM AXLE WEIGHT:** The total weight transmitted to the road by two (2) or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

POE 3 PORT OF ENTRY OPERATIONS AND AUTHORITY

3.1. **DELEGATION OF AUTHORITY.** Delegation of any authority held by the CSP ~~POE Branch Director~~ OSB MAJOR relevant to POE operations will ~~conform~~ BE CONSISTENT with CSP and CDPS policies.

3.2. **PERMANENT AND MOBILE POE OPERATIONS.** The Chief authorizes the establishment and operation of permanent POE weigh stations. The Chief ~~will~~ also authorizes the ~~establishment and~~ operation of mobile POE operations.

3.2.1. Permanent POE weigh stations will be established and operated at such points along public highways of this state as are determined necessary.

3.2.2. The location or relocation of permanent weigh stations will be determined by the Chief.

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

3.2.3. All permanent POE weigh stations will be operated at times determined by the Chief to reasonably allow owners and operators of motor vehicles subject to fees, licenses, taxes, or ~~to~~ rules imposed by the state of Colorado to comply with all such laws and rules by clearance at a POE weigh station.

3.2.4. Mobile POE weigh stations will be established and operated at such points along public highways of this state as are determined to be necessary.

3.2.4.1. Mobile POE weigh stations will post signs giving notice of their operations. This notice will inform owners and operators of vehicles required to stop and obtain clearance of their need to clear the mobile weigh station.

3.2.5. Mobile POE weigh stations have the same duties and authority as permanent POE weigh stations.

3.3. **AUTHORITY OF POE OFFICERS.** A POE officer, during the time he or she is engaged in performing his or her duties and while acting under proper orders or rules issued by the Chief will have and exercise all powers invested in peace officers in connection with the direction of traffic and the enforcement of §42-8-101, et al., CRS; Articles 2, 3, and 20 of Title 42, CRS; §42-4-501, et al., CRS; §42-4-209, CRS; §42-4-225 (1.5), CRS; §42-4-235, CRS; §42-4-1407, CRS; §42-4-1409, CRS; and §42-4-1414, CRS.

3.3.1. **DETENTION OF OPERATORS, VEHICLES, AND VEHICLE IMPOUND.** Within the scope of their authority, POE officers may restrain or detain persons and/or vehicles, impound vehicles, or collect outstanding taxes on behalf of the state of Colorado.

3.3.1.1. POE officers may also restrain or detain persons and/or vehicles, impound vehicles, or collect outstanding taxes in response to a lawful request from any other law enforcement agency recognized by this state.

3.3.1.2. An agency requesting detention must provide sufficient verifiable information that can be reliably used to identify the person or vehicle to be restrained, detained, or impounded, in addition to providing a reasonable basis by rule of law for the detention, restraint, or impoundment.

3.3.1.3. Information supplied by a requesting agency for the detention or impoundment of any person or vehicle may be communicated verbally or in writing, and must include:

3.3.1.3.1. The name of the agency requesting the detention or impoundment;

3.3.1.3.2. The name of the agency official requesting the detention or impoundment;

3.3.1.3.3. The rule of law ~~that is~~ being violated or suspected of being violated; and

3.3.1.3.4. The maximum time ~~that~~ a vehicle or operator is to be detained.

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

3.3.1.4. Motor vehicles detained or impounded by POE officers at the request of the DOR may be released promptly upon:

3.3.1.4.1. Payment of taxes and fees due;

3.3.1.4.2. Making a deposit sufficient to pay the same in full, after proper computations and adjustments have been made; or

3.3.1.4.3. Request of DOR.

3.3.1.5. The cargo of any impounded vehicle may be transferred to any properly licensed and qualified motor vehicle and permitted to proceed.

POE 4. REGULATIONS

4.1. **POE CLEARANCE AND THE DUTY TO STOP AND WEIGH.** Owners or operators of motor vehicles required to obtain clearance from the CSP POE under §42-8-105 (1), CRS, include:

4.1.1. Owners or operators of motor vehicles that are subject to payment of registration fees according to §42-3-306 (5) (b), CRS;

4.1.2. Owners or operators of motor vehicles displaying apportioned or GVW license plates; or

4.1.3. Owners or operators of motor vehicles or motor vehicle combinations having a GVWR or GCWR over 26,000 lbs.

4.1.4. Owners or operators of motor vehicles may obtain A required clearance by:

4.1.4.1. Securing a valid clearance from a CSP officer or POE weigh station before operating or causing the operation of the vehicle or combination of vehicles on the public highways of this state.

4.1.4.1.1. CMVIT may facilitate the collection of commercial motor vehicle data at physical, mobile, or virtual weigh stations where available and authorized to do so. Data collected through virtual operations will not be used to directly enforce statutory commercial motor vehicle clearance requirements.

4.1.4.2. Obtaining clearance from the first POE weigh station located within five (5) road miles of the route that the owner or operator would normally follow from their point of departure to the point of destination if a previous clearance or SRP has not been secured. To be valid, THE clearance must occur before arriving at the point of destination and before removing the load from the motor vehicle.

4.1.4.2.1. The route that a reasonable commercial vehicle owner or operator would take from the same points of departure and destination is

considered to be the "route that an owner or operator would normally follow."

4.1.4.3. Any owner or operator violates §42-8-105, CRS, if they fail to seek out a permanent POE weigh station that is located within five (5) road miles of the route that the owner or operator would normally follow.

4.1.5. Every owner or operator of a motor vehicle required to obtain clearance must stop at every POE weigh station located within five (5) road miles of their route of travel.

4.1.5.1. Vehicles with a seating capacity of 14 or more passengers registered under the requirements of §§42-3-304 (13) or 42-3-306 (2) (c) (I), CRS, are not required to secure a valid clearance.

4.2. **VEHICLE WEIGHT REQUIREMENTS - WHEEL AND AXLE LOADS.** Vehicles having a single drive-axle configuration and equipped with pneumatic tires are not subject to the axle weight limitations set forth within §42-4-507 (2) (b), CRS, and may operate in excess of 20,000 lbs. axle weight when:

4.2.1. The single-drive-axle vehicle is equipped with a self-compactor; and

4.2.2. Is used solely for the transporting of trash.

4.2.3. Vehicles equipped with, but not using a tandem drive-axle configuration, will not be permitted to operate over an axle weight of 20,000 lbs. and must comply with the axle weight limitations set forth within §42-4-507 (2) (B), CRS.

4.3. **AUXILIARY POWER UNITS (APU) AND IDLE REDUCTION TECHNOLOGY UNITS.** Any vehicle that uses an APU or idle reduction technology unit to reduce fuel use and emissions resulting from engine idling will have the actual weight of the APU or idle reduction technology unit exempted from the calculation of the actual axle and GVW, up to 550 lbs. To be eligible for this weight exemption, the operator of the vehicle must provide:

4.3.1. Written certification of the actual weight of the APU or idle reduction technology unit; and

4.3.2. Written certification or demonstration that confirms the idle reduction technology unit is fully functional at all times.

4.4. **BUSES.** Any over-the-road bus, or any vehicle ~~which is~~ regularly and exclusively used as an intrastate public agency transit passenger bus, is exempted from compliance with the axle limits set forth within §42-4-507 (2) (b), CRS.

4.5. **GROSS VEHICLE WEIGHT (GVW) – DETERMINATION OF GVW.** The legal GVW or GCW limit for any vehicle or combination of vehicles specified within §42-4-508 (1), CRS, will be determined by the actual number of axles in contact with the road surface and the applicable Bridge Weight Formula.

4.5.1. Except where otherwise provided by §§42-4-508 or 42-4-510, CRS, vehicles or vehicle combinations operating on any highway or bridge that is part of the national system of

interstate and defense highways (otherwise known as the interstate highway system) must:

4.5.1.1. Have their total weight distributed so that no axle exceeds the legal axle weight limit for the highway traveled;

4.5.1.2. Comply with the federal bridge formula set forth within §42-4-508 (1) (c), CRS; and

4.5.1.3. Not exceed a maximum of 80,000 lbs. in the calculation of the federal bridge formula.

4.5.1.3.1. Natural gas alternative fuel system vehicles may operate up to a GVW of 82,000 lbs., as is consistent with applicable state law, the exemption set forth within 23 USC 127 (S), and FHWA guidance regarding natural gas alternative fuel system vehicles.

4.5.1.3.2. Alternative fuel vehicles not operating natural gas systems may operate up to a maximum GVW of 80,000 lbs., consistent with §§42-4-508 (1.5), 25-7-106.8, and 25-7-139, CRS.

4.5.2. Except where otherwise provided by §§42-4-508 or 42-4-510, CRS, vehicles or vehicle combinations operating on any highway other than a highway identified as part of the interstate highway system must:

4.5.2.1. Have their total weight distributed so that no axle exceeds the legal axle weight limit for the highway traveled;

4.5.2.2. Comply with the state bridge formula set forth within §42-4-508 (1) (b), CRS; and

4.5.2.3. Not exceed a maximum of 85,000 lbs. in the calculation of the state bridge formula.

4.6. **VEHICLE-WIDTH – MEASUREMENT OF COMMERCIAL MOTOR VEHICLE WIDTH.** Vehicle width will be measured from the point farthest from the center of the motor vehicle or a combination of motor vehicles on each side of the vehicle or a combination of vehicles.

4.6.1. Vehicle components not excluded by law or regulation are included in the measurement of commercial motor vehicle width. Components that are excluded from the measured width of a commercial motor vehicle include, but are not limited to:

4.6.1.1. Rear view mirrors, turn signal lamps, handholds for cab entry/egress, splash and spray suppressant devices, load-induced tire bulge; and

4.6.1.2. All non-property-carrying devices, or components thereof, that do not extend more than three (3) inches beyond each side of the vehicle.

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

4.7. **VEHICLE LENGTH – MEASUREMENT OF COMMERCIAL MOTOR VEHICLE LENGTH.** Vehicle length is generally measured from the front-most fixed point (generally the front bumper) to the rear-most fixed point (generally where the brake lights are located).

4.7.1. Any permanently mounted appurtenance that extends beyond the front or rear of the vehicle to which it is mounted becomes part of the vehicle. A permanently mounted appurtenance is included in the overall measurement of vehicle length.

4.7.2. Vehicle components not excluded by law or regulation will be included in the measurement of the length of commercial motor vehicles. Components that are excluded from the measured length of a commercial motor vehicle include, but will not be limited to:

4.7.2.1. Rear view mirrors, turn signal lamps, handholds for entry/egress, splash and spray suppressant devices;

4.7.2.2. All non-property-carrying devices, or components thereof that do not exceed 24 inches beyond the rear of the vehicle as stated within 23 CFR 658.16;

4.7.2.3. Resilient bumpers that do not extend more than six (6) inches beyond the front or rear of the vehicle; OR

4.7.2.4. Lamps or flags on projecting loads in use consistent with §42-4-209, CRS, or devices exempted from THE length, AND are not considered a projection or overhang.

4.7.3. **LENGTH MEASUREMENT OF SPECIALIZED AUTOMOBILE TRANSPORTERS.** The overall length measurement of a specialized automobile transporter is calculated exclusive of:

4.7.3.1. Front and rear cargo overhang;

4.7.3.2. Safety devices not designed or used for carrying cargo; and

4.7.3.3. Any extension device (ramp or "flippers") that may be used for loading beyond the extreme front or rear end of a vehicle or combination of vehicles.

4.7.3.3.1. Extendable ramps or "flippers" on specialized automobile transporters that have not been retracted and are not supporting vehicles will be included in the measurement of vehicle length.

4.7.4. **MEASUREMENT OF TRAILERS – TRAILER DRAWBAR OR TONGUE LENGTH.**

4.7.4.1. Where the trailer drawbar or tongue is of rigid construction, the measurement will be taken from the rear-most point of the power unit's cargo box to the front-most point of the trailer's mainframe.

4.7.4.2. Where the trailer drawbar is hinged, the measurement will be taken from the rear-most of the power unit's cargo box to the front-most point of the drawbar hinge.

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

4.7.4.3. A tool or accessory box that is welded or attached to the trailer drawbar or tongue is not included in the calculation of a trailer's drawbar or tongue length.

4.7.4.4 A trailer drawbar may not exceed 15 feet between two (2) vehicle units except when:

4.7.4.4.1. The connection is between any two (2) vehicles transporting poles, pipe, machinery, or other objects of a structural nature that cannot be readily dismembered; or

4.7.4.4.2. Connections between vehicles are of rigid construction and are included as part of the structural design of the towed vehicle, and the overall combined length of the vehicles and the connection does not exceed 55 feet.

4.7.4.5. Adjustable pole trailers that are primarily designed for the transportation of cargo must have the connection between vehicles reduced to 15 feet or less when operating without cargo if the overall vehicle combination exceeds 55 feet.

4.8. **VEHICLE HEIGHT.** Maximum height limits are as designated by the CDOT and are available online from the CDOT Freight Mobility & Safety website, HTTPS://FREIGHT.COLORADO.GOV, by selecting "route planning" ~~and~~ THEN "maps," AND THEN BY SCROLLING DOWN TO "OTHER MAPS" AND SELECTING "VERTICAL CLEARANCE."~~.~~

4.8.1. Vehicles, laden or unladen, must not exceed a height of 14 feet six inches and must be operated in compliance with §42-4-504 (1), CRS.

4.9. **USE OF CMVIT CONCERNING CMV SIZE AND WEIGHT.** CMVIT may facilitate the identification of potential size, weight, and permit violations of commercial motor vehicles in Colorado where available and authorized to do so. CMVIT will not be used IN ANY WAY INCONSISTENT WITH STATE STATUTES OR CONTRARY TO ANY APPLICABLE STATE AND/OR FEDERAL RULES OR REGULATIONS ~~to directly enforce size, weight, or permit state statutes or federal regulations~~.

POE 5 PERMITS.

5.1. **SPECIAL REVOCABLE PERMITS (SRP).** An SRP may be issued to an owner or operator of any vehicle being operated over a regularly scheduled route within five (5) road miles of a permanent POE weigh station according to §42-8-105 (1), CRS.

5.1.1. An SRP waives the requirement that an owner or operator seek out and secure A valid clearance at a permanent POE that is located within five (5) road miles of an identified regularly scheduled route.

EDITOR NOTE: All deletions of text from this document appear in **~~STRIKEOUT~~** text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

5.1.2. The use or issuance of any SRP is contingent upon an applicant's or permit holder's compliance with any applicable rules, laws (federal, state, county, and local), and the requirements set forth within these rules.

5.2. **APPLICATION FOR SRP.** An application for an SRP is made by completing and submitting an application to the CSP POE SECTION ~~Branch~~.

5.2.1. SRP applications are provided by the CSP POE SECTION ~~Branch~~ upon request, online, and may also be submitted to the CSP POE SECTION ~~Branch~~ online through the CDOT COOPR website.

5.2.2. The CSP POE SECTION ~~Branch~~ will collect any information identified as necessary to determine an applicant's eligibility for an SRP. Information necessary to determine an applicant's eligibility includes:

5.2.2.1. The legal name of the applicant and the name under which the applicant conducts business, if applicable;

5.2.2.2. The physical and mailing addresses of the applicant;

5.2.2.3. The USDOT# assigned to and used by the applicant;

5.2.2.4. The number of vehicles proposed to be subject to the SRP if it is issued and the VIN~~s~~ for each vehicle;

5.2.2.5. The POE weigh station location(s) the applicant would like the SRP to affect;

5.2.2.6. The name and signature of the person submitting the SRP application on behalf of the applicant; and

5.2.2.7. A detailed description of the applicant's regularly scheduled route. This description should, at minimum, identify the points of origin and destination(s) for the route PROVIDED.

5.2.2.8. If the information initially provided by the applicant is insufficient, additional information will be requested.

5.3. **SRP APPROVAL.** When an application for an SRP is approved, the SRP will be issued by the CSP POE SECTION ~~Branch~~ upon the recommendation and the approval of the ~~POE Director~~ OSB MAJOR or HIS OR HER designee.

5.3.1. Within its discretion, the CSP POE SECTION ~~Branch~~ reserves the right to attach special conditions to the ~~issuance~~ APPROVAL of any SRP where the CSP POE SECTION ~~Branch~~ determines that it is necessary or advisable to include specific conditions beyond those generally applicable to SRP use.

5.3.2. Any SRP issued to an applicant/permit holder must be:

5.3.2.1. Carried at all times in any authorized vehicle when being operated over the approved regularly scheduled route; and

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

5.3.2.2. Available upon demand for inspection by the CSP POE or any other state or law enforcement officer.

5.3.2.3. Electronic copies of the permit are acceptable.

5.3.3. An SRP issued to an eligible SRP applicant by the CSP POE SECTION ~~Branch~~ may be valid for up to 36 months, except where an otherwise eligible applicant is determined unsatisfactory following a review of their violation, safety, and/or port clearance records.

5.3.3.1. Eligibility for an SRP is based in part on the applicant's safety record and "BASICs" reported by the FMCSA.

5.3.3.2. The number and type of violation convictions received by drivers operating vehicles for the applicant within the state of Colorado are considered when determining applicant eligibility.

5.3.3.3. The number of port clearances during the 12 months before the SRP application date is relevant in determining eligibility.

5.3.3.4. The ~~permit holder's~~ APPLICANT's compliance with any previously issued SRP terms and conditions will factor into the decision to issue any subsequent SRP to the applicant.

5.3.4. An SRP applicant determined to be an unsatisfactory applicant may be eligible for a Probationary SRP where:

5.3.4.1. The applicant does not meet the definition of a "High-Risk Motor Carrier"; or

5.3.4.2. The applicant meets the definition of a "High-Risk Motor Carrier," but the applicant's Company Snapshot available through the USDOT FMCSA Safety and Fitness Electronic Records (SAFER) System website confirms a conditional or satisfactory rating for the applicant.

5.3.5. An SRP applicant who is issued a Probationary SRP:

5.3.5.1. Must demonstrate that corrective actions are in progress or in place to maintain or improve SRP eligibility.

5.3.5.2. May apply for an SRP after the Probationary SRP period.

5.3.5.2.1. The permit holder's compliance with the conditions of the Probationary SRP factors into the decision to issue any subsequent SRP to the applicant.

5.3.5.2.2. An SRP applicant applying for an SRP following the revocation of their prior SRP will first be eligible to apply for a Probationary SRP.

5.3.6. An SRP:

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

5.3.6.1. Is not transferable from company to company or between vehicles without prior approval of the CSP POE SECTION ~~Branch~~;

5.3.6.2. Does not affect the right of any lawful authority to stop a vehicle to check for:

5.3.6.2.1. Operating credentials;

5.3.6.2.2. Applicable oversize or overweight violations; or

5.3.6.2.3. Violations of other motor vehicle laws.

5.3.6.3. Is valid only when used by an authorized vehicle operating within the scope of the approved regularly scheduled route.

5.3.7. The CSP POE SECTION ~~Branch~~ will respond to all complete SRP applications with a decision to either issue or deny an SRP within 7 calendar days of receipt.

5.4. **DENIAL OF SRP.** An application for an SRP may be denied if:

5.4.1. The applicant has failed to pay taxes or registration fees when due;

5.4.2. The applicant is subject to the payment of recurrent distraint penalties as set forth within §39-21-114 (7), CRS;

5.4.3. In the 12 months before the SRP application date, any vehicle operator of the applicant demonstrates a pattern of non-compliance with the duty to stop and weigh or the duty to obtain clearance imposed by §§42-4-509 (3) and 42-8-105, CRS, respectively;

5.4.4. In the 12 months before the SRP application date, any vehicle operator of the applicant has been convicted of three (3) or more violations of size and weight requirements as are set forth within §42-4-501, et seq., CRS;

5.4.5. The applicant meets the definition of a "High-Risk Motor Carrier" and the FMCSA SAFER Company Snapshot does not have a carrier rating or has a rating of "unsatisfactory";

5.4.6. In the 12 months before the SRP application date, violation convictions received by any vehicle operator of an applicant demonstrate~~s~~ a pattern of non-compliance with applicable laws;

5.4.7. Following suspension or revocation of an SRP, vehicle operators of an applicant continue to violate the laws that resulted in the suspension or revocation of the SRP;

5.4.8. The applicant has misused, or used fraudulently, or has otherwise failed to comply with the conditions of any previously issued valid permit or license;

5.4.9. The application for the SRP misrepresents or provides inaccurate information regarding the regularly scheduled route; or

5.4.10. A request for additional information ~~deemed necessary to consider the eligibility of an SRP applicant by the CSP POE Branch is~~ not responded to ~~by the SRP applicant~~ within 30 calendar days.

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

5.4.10.1. An applicant whose SRP application is denied due to the applicant's failure to respond to a request from the CSP POE SECTION ~~Branch~~ to provide additional information may resubmit their application without prejudice.

5.4.10.2. The CSP POE SECTION ~~Branch~~ will have 7 calendar days to respond to the resubmitted SRP application.

5.5. **PERMIT SUSPENSION AND REVOCATION.** A permit holder's SRP(s) may be suspended when:

5.5.1. A permit holder fails to pay taxes or registration fees when due;

5.5.2. A permit holder is subject to the payment of recurrent distraint penalties as described within §39-21-114 (7), CRS;

5.5.3. A permit holder used the permit to evade any law;

5.5.4. In a 12-month period during which an SRP has been issued, any vehicle operator of a permit holder has been convicted of three (3) or more violations in a vehicle assigned TO an SRP of the size and weight requirements of §42-4-501, et seq., CRS;

5.5.5. In a 12-month period during which an SRP has been issued, any vehicle operator of a permit holder demonstrates a pattern of non-compliance with either the duties to stop and weigh or obtain clearance as set forth within §§42-4-509 (3) and 42-8-105, CRS, respectively;

5.5.6. In a 12-month period during which an SRP has been issued, violation convictions received by any vehicle operator for a permit holder demonstrate~~s~~ a pattern of non-compliance with applicable laws;

5.5.7. Any authorized vehicle utilizing an SRP does not obtain port clearance from the affected POE weigh station(s) at least once per quarter during the period the SRP is valid;

5.5.7.1. The quarterly clearance requirement cannot be satisfied using PrePass, Drivewyze, or any other electronic clearance program.

5.5.8. The approved regularly scheduled route for which an SRP is issued to a permit holder is altered or discontinued;

5.5.9. A permit holder is identified as a "High-Risk Motor Carrier" and their FMCSA SAFER Company Snapshot does not have a carrier rating or reports an "unsatisfactory" carrier rating;

5.5.10. The permit holder violates any conditions applicable to an SRP; or

5.5.11. The permit holder misuses any permit or license.

5.6. **SRP REVOCATION.** A permit holder's SRP(s) may be revoked when:

5.6.1. A permit holder who has been subject to SRP suspension continues to demonstrate a pattern of non-compliance with applicable laws and rules;

5.6.2. A permit holder fails to comply with the terms of any Probationary SRP; and/or

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

5.6.3. A permit holder fails to take any steps as may be directed by the CSP POE SECTION ~~Branch~~ to improve or achieve compliance within a prescribed period.

5.7. **SRP APPLICATION DENIAL, SRP SUSPENSION, OR SRP REVOCATION BY WRITTEN NOTICE.** Denial, suspension, or revocation of any SRP will be by written notice from the CSP POE SECTION ~~Branch~~.

5.8. **RIGHT TO APPEAL SRP APPLICATION OR PERMIT DENIAL, SUSPENSION, OR REVOCATION AND TO REQUEST A HEARING.** An applicant or permit holder may request a hearing within ~~30~~ 60 days of receiving written notice from the CSP POE SECTION ~~Branch~~ denying, suspending, or revoking an SRP. Hearing requests by applicants or permit holders appealing an SRP denial, suspension, or revocation must be:

5.8.1. Made in writing; and

5.8.2. Addressed to the ~~Director~~ MAJOR of the CSP ~~POE~~ OSB ~~Branch~~ at 15075 S. Golden Rd., Golden, CO., 80401.

5.9. **HEARING AND REVIEW.** The ~~POE Branch Director~~ OSB MAJOR will hold the hearing.

5.9.1. The scope of the hearing will be limited to whether the applicant or permit holder has complied with these rules.

5.9.2. The ~~POE Director~~ OSB MAJOR will issue a written decision within 20 business days of the completed hearing.

5.9.2.1. If the ~~POE Director~~ OSB MAJOR finds that evidence of non-compliance and ineligibility is sufficient, the SRP application denial, suspension, or revocation will be sustained.

5.9.2.2. If the ~~POE Director~~ OSB MAJOR finds that evidence of compliance and ineligibility is insufficient, the SRP application denial, suspension, or revocation will be immediately overturned and the SRP or previous SRPs will be issued or reinstated.

5.9.2.3. If the ~~POE Director~~ OSB MAJOR finds that evidence of non-compliance and ineligibility is insufficient to support application denial, permit suspension, or revocation but is sufficient to find an SRP applicant or permit holder to be unsatisfactory under these rules, it is within the discretion of the MAJOR ~~Director~~ to issue or reinstate any SRP as a Probationary SRP for a period not to exceed one (1) year.

5.9.3. The decision by the ~~Director~~ MAJOR will constitute a final agency action and is subject to judicial review as described by §24-4-106, CRS.

POE 6 INQUIRIES, PUBLICATIONS, AND SEVERABILITY.

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

6.1. **RULE INQUIRIES.** All contact with the CSP POE ~~Branch~~ SECTION about these rules or their applicability should be addressed to the:

Colorado State Patrol Port of Entry SECTION ~~Branch~~
15075 S. Golden Rd., Golden, CO., 80401
(303)-273-1870 (Main Phone)
~~(303) 278-2434 (Fax)~~

6.2. **PUBLICATIONS.** All publications, standards, or guidelines adopted and incorporated by reference in these rules are on file with and available upon request for public examination at any state publication depository library as required by §24-4-103 (12.5), CRS. Inspection by contacting the CSP POE SECTION ~~Branch~~ at 15075 S. Golden Rd., Golden, CO., 80401-3990. These rules are available online through the CDPS Rulemaking website at HTTPS://PUBLICSAFETY.COLORADO.GOV/GET-INVOLVED/RULES-AND-REGULATIONS.

6.2.1. All publications, standards, or guidelines adopted and incorporated by reference in these rules will be provided and made available for examination at any state publication depository library as required by §24-4-103 (12.5), CRS. The following publication(s), standard(s), and guideline(s) have been referenced within these rules in accordance with §24-4-103 (12.5), CRS:

6.2.~~.~~1.1. United States Department of Transportation, Federal Motor Carrier Safety Administration (2021). High Risk Carriers Investigations Report. Status of High-Risk Carrier Investigations (Last updated August 3, 2021). Accessed NOVEMBER 30, 2023. HTTPS://WWW.FMCSA.DOT.GOV/MISSION/POLICY/HIGH-RISK-CARRIERS-INVESTIGATION-REPORT. ~~September 19, 2022, https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/ docs/High%20Risk%20Carriers%20Investigation%20Report.pdf#:~:text=The%20Federal%20Motor%20Carrier%20Safety%20Administration%20%28FMCSA%29%20identifies,America%27s%20Surface%20Transportation%20Act%20%28FAST%20Act%29%20Section%205305.~~

6.2.2. The CSP POE SECTION ~~Branch~~ will maintain copies of the complete texts of the aforementioned publications, standards, guidelines, and rules and will make them available for public inspection during regular business hours. Interested parties may access these documents free of charge online. Interested parties may also inspect the referenced materials and/or obtain copies of the adopted standards for a reasonable fee by contacting the CSP Central Records Unit (CRU) at 700 Kipling St., Lakewood, CO., 80215 OR BY EMAIL AT CDPS_CSPRECORDS@STATE.CO.US. Copies of the adopted publications, standards, guidelines, and rules may also be available from the organization(s) of their original issue:

6.2.2.1. United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), 1200 New Jersey Ave., SE Room W-65-206, Washington, DC, 20590. Phone: 1-(800)-832 - 5660. Website: WWW.FMCSA.DOT.GOV.

EDITOR NOTE: All deletions of text from this document appear in ~~**STRIKEOUT**~~ text, all new text appears in **RED TEXT** and all text that is being relocated within the document appears in **BLUE TEXT**

6.2.3. These rules do not include later amendments to or editions of any publications, standards, guidelines, or rules incorporated by reference.

6.3. **SEVERABILITY.** If any provision of these rules or the application thereof to any person or circumstance is determined to be unlawful or invalid, the remaining provisions of these rules will not be affected, absent a specific reference.

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-30

Rule title

1 CCR 204-30 DRIVER'S LICENSE-DRIVER CONTROL 1 - eff 01/14/2024

Effective date

01/14/2024

RULE 6 RULES FOR THE APPLICATION FOR A DRIVER'S LICENSE OR IDENTIFICATION CARD FOR U.S. CITIZENS AND INDIVIDUALS WHO CAN DEMONSTRATE PERMANENT LAWFUL PRESENCE AND COLORADO RESIDENCY

Purpose

The purpose of this rule is to set forth regulations for the types of documents the Department will accept as proof of the Applicant's Identity, date of birth, residency, and U.S. citizenship or Permanent Lawful Presence when applying for a Driver's License or Identification Card. Additionally, this rule describes the process the Applicant will be required to follow for completing the application and what will occur if an application is incomplete or denied, including the process the Applicant may use to request a Hearing if their application is denied.

Statutory Authority

The statutory bases for this regulation are sections 24-4-103, 24-72.1-102(5), 24-72.1-103, 42-1-204, 42-2-107, 42-2-108, and 42-2-302, C.R.S.

Incorporation by Reference of Federal Law

The Department incorporates, as part of Rule 6 of the Department of Revenue Regulations, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, section 384, 110 Stat. 3009 (Sept. 30, 1996), referred to in this Rule 6. Such Act is published by the Department of Homeland Security in full in the United States Statutes at Large, Volume 110, page 3009. Rule 6 does not include any later amendments or editions of such Act.

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

1.0 Definitions

1.1 Applicant–Any natural person applying to the Department for a Colorado Driver's License or Identification Card who is a U.S. citizen or who can demonstrate Permanent Lawful Presence in the U.S. and residency in Colorado.

1.2 Asylee – A person approved for asylum status by the United States Citizenship and Immigration Services or the Executive Office for Immigration Review.

1.~~2~~3 Department–The Colorado Department of Revenue.

1.~~3~~4 Document–An original document certified by the issuing agency, an amended original document certified by the issuing agency, or a true copy certified by the issuing agency, excluding miniature, wallet sized, or photocopies of documents.

1.~~4~~5 Driver's License–A driver's license, minor driver's license, or instruction permit.

1.~~5~~6 Exceptions Processing–The procedure the Department has established for persons who are unable, for reasons beyond their control, to present all necessary Documents and must rely on alternative Documents to establish Identity, date of birth, or U.S. citizenship

1.~~6~~7 Full Legal Name –The Applicant's first name, middle name(s), and last name or surname, without use of initials or nicknames.

1.~~7~~8 Hearing–Hearing before a Department Administrative Hearing Officer.

1.9 Identification Card– A Document issued by a Department of Motor Vehicles or its equivalent that contains the Applicant's Full Legal Name, full facial digital photograph, date of birth, and sex, but does not confer upon the bearer the right to operate a motor vehicle.

1.10 Identity–The verifiable characteristics that when taken together make a person unique and identifiable. Evidence of Identity includes proof of Full Legal Name, date of birth, and physical characteristics and must include a verifiable photograph unless approved through Exceptions Processing.

1.11 Incomplete Application–An application for a Colorado Driver's License or Identification Card that does not satisfy federal and state requirements for the issuance of a Colorado Driver's License or Identification Card.

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

1.13 Permanent Lawful Presence - The status of a person who is a citizen or national of the United States, a lawful permanent resident, a conditional lawful permanent resident, an asylee, or a refugee.

1.14 Refugee – A person who has been admitted into the United States in refugee status.

1.15 SSA – The U.S. Social Security Administration.

1.16 SSN – The Social Security Number issued by SSA.

1.17 SSOLV–The Social Security Online Verification system managed by SSA.

1.18 Travel Document - The Refugee Travel Document issued to a person with refugee or asylum status who wishes to travel outside the United States in order to return to the United States. Similar in appearance to a U.S. passport.

1.19 USCIS – United States Citizenship and Immigration Services.

2.0 Proof of Identity, Date of Birth, and Permanent Lawful Presence

2.1 Every application for a Colorado Driver's License or Identification Card shall include the Applicant's full legal name, date of birth, sex, SSN, and address of principal residence.

2.2 An Applicant must provide source Documents that are secure and verifiable as defined in section 24-72.1-102(5), C.R.S.

2.3 The following Documents or combination of Documents are acceptable to establish Identity, date of birth, and Permanent Lawful Presence:

2.3.1 A valid, unexpired Colorado Driver's License or Identification Card except that a Colorado Driver's License or Identification Card issued under the Colorado Road and Community Safety Act, section 42-2-501 et seq., C.R.S. is not acceptable.

2.3.2 A valid, unexpired U.S. passport verified using U.S. Passport Verification Services.

2.3.3 A certified copy of a birth certificate filed with a State Office of Vital Statistics or equivalent agency in the Applicant's state of birth.

2.3.3.1 County and municipal vital statistics and vital records offices are considered equivalent agencies for the purposes of this rule.

2.3.4 A Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State (Form FS-240, DS-1350, or FS-545).

2.3.5 A valid, unexpired Permanent Resident Card (Form I-551) issued by the Department of Homeland Security (DHS) or USCIS~~:~~, a valid or less than 10 years expired foreign passport with an I-551 ADIT (Alien Documentation, Identification and Telecommunication) stamp, a valid foreign passport with DHS stamped US visa showing admittance as a permanent resident for 1 year, or an expired I-551 card with an I-797 notice showing an unexpired extension, verified by SAVE.

2.3.6 A Certificate of Naturalization issued by DHS or USCIS (Form N-550 or N-570), verified by SAVE.

2.3.7 A Certificate of Citizenship issued by DHS or USCIS (Form N-560 or N-561), verified by SAVE.

2.3.8 A valid unexpired Driver's License or Identification Card verified with the state of issuance.

2.3.9 An unexpired foreign passport accompanied by a valid I-94 demonstrating approved refugee or asylee status, a valid I-94 demonstrating approved refugee or asylee status with DHS-attached photo less than 20 years old, or a valid I-94 demonstrating approved refugee or asylee status with a Travel Document, verified by SAVE.

2.3.10 Such other Documents as determined by the Department consistent with the REAL ID Act.

2.4 To establish a name other than the name that appears on a source Document (for example through marriage, adoption, court order or other mechanism permitted by state law or regulation), the Department shall require evidence of the name change through the presentation of Documents issued by a court, governmental body, or other entity as determined by the Department.

3.0 Social Security Requirements

3.1 An Applicant must provide his or her SSN.

3.2 An Applicant's SSN shall be verified using SSOLV.

4.0 Address of Principal Residence in Colorado

4.1 To document the address of principal residence in Colorado, an Applicant must present at least two articles of documentation that include the Applicant's name and address of principal residence. Examples include, but are not limited to: utility bill, credit card statements, pay stub or earnings statement, rent receipt, telephone bill, or bank statement.

4.2 A Colorado street address must be displayed on the Driver's License or Identification Card except as provided below:

4.2.1 An alternative address may be displayed for individuals for whom a State law, regulation, or the procedures of the Department permit display of an alternative address.

4.2.2 An alternative address may be displayed for individuals who satisfy any of the following:

4.2.2.1 If the individual is enrolled in a State address confidentiality program, which allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking, to keep, obtain and use alternative addresses, and provides that the address of such person must be kept confidential, or other similar program; or

4.2.2.2 If the individual is entitled to have their address suppressed under state or federal law or suppressed by a court order including an administrative order issued by a State or Federal court; or

4.2.2.3 If the individual is protected from disclosure of information pursuant to section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

4.2.3 In areas where a number and street name has not been assigned for U.S. mail delivery, an address convention used by the U.S. Postal Service is acceptable.

5.0 Qualifications for Issuance of a Duplicate Driver's License

5.1 Applicants may apply for a duplicate of an existing Driver's License as provided below:

5.1.1 Applicants may appear in person and certify, under penalty of perjury, that the previous credential was lost, stolen, or destroyed by completing the "Request for Duplicate Instruction Permit/Driver's License" (DR2989) form provided by the Department.

5.1.2 Applicants may submit, by mail, the "Request for Duplicate Instruction Permit/Driver's License" (DR2989) form provided by the Department on which the Applicant must certify, under penalty of perjury, that the previous credential was lost, stolen, or destroyed.

5.1.3 Eligible Applicants may submit an electronic application, on which the Applicant must certify, under penalty of perjury, that the previous credential was lost, stolen, or destroyed.

6.0 Electronic Applications

6.1 The Department may accept electronic applications for services provided electronically.

6.2 The Department may accept an application electronically if the Applicant's fingerprint was captured as part of a previous application.

6.3 The Department may accept an application electronically if a signature was captured as part of a previous application and if the Applicant verifies the information on the application.

7.0 Process for Complete Application

7.1 When an Applicant has completed the required application and met the standards established in this rule, the Applicant will be required to review and verify the information on the application by signing a "signature capture device"; a fingerprint will be captured; and a photograph of the Applicant will be taken. A temporary Colorado Driver's License or Identification Card will be issued. The permanent Colorado Driver's License or Identification Card will be mailed to the Applicant at the address provided on the Applicant's application.

8.0 Process for Incomplete Application

8.1 If an application is incomplete or the Applicant has failed to provide Documents verifiable by the Department for Identity, date of birth, Permanent Lawful Presence, and residency in Colorado, the Department shall provide a Notice of Incomplete Application unless the Department provides a Notice of Denial per section 9.0 below.

8.2 The Notice of Incomplete Application shall include a notation of the information that is incomplete or of the documentation that is unverifiable. If the authenticity of a Document cannot be verified, then an application may be considered incomplete and additional documentation may be required, or the Applicant may be referred to Exceptions Processing. An Applicant may return to the Department with additional documentation prior to being denied a Colorado Driver's License or Identification Card.

8.3 Any Applicant who has received a Notice of Incomplete Application and believes he or she has provided sufficient documentation to establish Identity, date of birth, and Permanent Lawful Presence, may proceed with Exceptions Processing.

8.4 Any Applicant who has received a Notice of Incomplete Application and believes he or she has provided sufficient documentation to establish Identity, date of birth, Permanent Lawful Presence, and residency may request a Notice of Denial and contest the decision through the process described in section 9.0 below.

9.0 Denial of Applications

9.1 If an application is incomplete or the Applicant has failed to provide Documents verifiable by the Department for Identity, date of birth, Permanent Lawful Presence, and residency, the Department may provide a Notice of Denial.

9.2 Nothing in this regulation shall be construed to prevent the Department from denying an application on the basis that an Applicant has presented Documents that are fraudulent or that are not secure and verifiable pursuant to section 24-72.1-102(5), C.R.S.

9.3 Nothing in this regulation restricts or prohibits the Department from verifying any Document presented by an Applicant.

9.4 An application shall be denied if the Applicant presents fraudulent or altered Documents or commits any other fraud in the application process.

10.0 Hearing and Final Agency Action

10.1 An Applicant who has received a Notice of Denial may, within 60 days of the date of the Notice of Denial, request a hearing on the denial by filing a written request for hearing with the Hearings Section of the Department at the address specified on the Notice of Denial.

10.2 Hearings shall be held in accordance with the provisions of the State Administrative Procedure Act and the provisions of Title 42 of the Colorado Revised Statutes.

10.3 The only issue at the hearing shall be whether the Applicant has satisfied federal and state requirements for the issuance of a Colorado Driver's License or Identification Card.

10.4 The hearing officer shall issue a written decision. If the hearing officer finds that the Applicant has not satisfied federal and state requirements for the issuance of a Colorado Driver's License or Identification Card, then the denial shall be sustained. If the hearing officer finds that the Applicant has satisfied federal and state requirements for the issuance of a Colorado Driver's License or Identification Card, then the denial shall be rescinded and the Department shall issue the Colorado Driver's License or Identification Card.

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: 2023-00212

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

Division of Motor Vehicles

on 11/21/2023

1 CCR 204-30

DRIVER'S LICENSE-DRIVER CONTROL

The above-referenced rules were submitted to this office on 12/05/2023 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.

December 07, 2023 08:20:26

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-30

Rule title

1 CCR 204-30 DRIVER'S LICENSE-DRIVER CONTROL 1 - eff 01/14/2024

Effective date

01/14/2024

RULE 16 RULES FOR EXCEPTIONS PROCESSING

Purpose

The purpose of this rule is to set forth regulations for an Exceptions Process and identify the alternative documents the Department will accept. Exceptions Processing is the procedure the Department has established for persons who are unable, for reasons beyond their control, to present all the necessary documents required for a Colorado or Colorado Road and Community Safety Act Driver's License or Identification Card and must rely on alternative documents. For Applicants who are U.S. citizens, Exceptions Processing allows for alternative documents to be presented that establish Identity, date of birth and U.S. citizenship. For Applicants who cannot demonstrate lawful presence or for Applicants who can demonstrate temporary or permanent lawful presence, Exceptions Processing allows for alternative documents to be presented that establish Identity and date of birth. For Applicants who do not have an established residence, Exceptions Processing allows for an alternative to establish residency.

Statutory Authority

The statutory bases for this regulation are sections 13-15-101(5) (a), 24-4-103, 24-72.1102(5), 42-1-204, 42- 1-230, 42-2-107, 42-2-136, 42-2-302, and 42-2-501, et seq., C.R.S. This regulation applies to documents issued under Title 42, Article 2, Parts 1, 2, 3, and 5.

1.0 Definitions

1.1 Applicant – Any natural person applying to the Department for a Colorado Driver's License, Identification Card or a Colorado Road and Community Safety Act Identification Document.

1.2 Asylee – A person approved by the United States Citizenship and Immigration Services or the Executive Office for Immigration Review for asylum status.

1.3 CO-RCSA – The Colorado Road and Community Safety Act, part 5 of article 42 C.R.S.

1.4 Department – The Colorado Department of Revenue.

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

1.6 Driver's License – A driver's license, minor driver's license, or instruction permit.

1.7 Exceptions Processing – The procedure the Department has established for persons who are unable, for reasons beyond their control, to present all necessary Documents and must rely on alternative Documents to establish Identity, date of birth or U.S. citizenship.

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

1.9 Hearing – Hearing before a Department Administrative Hearing Officer.

1.10 Identification Card – A Document issued by a Department of Motor Vehicles or its equivalent that contains the Applicant's Full Legal Name, full facial digital photograph,

date of birth, and sex, but does not confer upon the bearer the right to operate a motor vehicle.

1.11 Identity – The verifiable characteristics that when taken together make a person unique and identifiable. Evidence of Identity includes proof of Full Legal Name, date of birth, and physical characteristics, and must include a verifiable photograph unless approved through Exceptions Processing.

1.12 Incomplete Application – An application that does not satisfy all the federal and state requirements for issuance of a Colorado Driver's License, Identification Card or a CO-RCSA Identification Document resulting in a Notice of Incomplete Application.

1.13 Minor Spelling Inconsistencies – Slight variations in the spelling of a full legal name such that the variations are similar in appearance or produce a phonetically similar or identical sound as pronounced.

1.14 Permanent Lawful Presence - The status of a person who is a citizen or national of the United States, a lawful permanent resident, a conditional lawful permanent resident, an asylee, or a refugee.

1.15 Refugee – A person who is approved by the Department of State for Refugee status.

1.16 SSA – The United States Social Security Administration

1.17 SSN – The Social Security Number issued by SSA.

1.18 SSOLV – The Social Security Online Verification system managed by SSA.

1.19 Temporary Lawful Presence –The status of a person whose authority to lawfully remain in the United States is temporary and who qualifies for a CO-RCSA Identification Document.**2.0 Exceptions Processing Procedures**

2.1 An Applicant who has applied for a Driver's License, Identification Card or CO-RCSA Identification Document and was unable to provide the required Documents may request Exceptions Processing after being issued a Notice of Incomplete Application.

2.2 For Applicants who are U.S. citizens, Exceptions Processing shall only be used to establish Identity, date of birth and U.S. citizenship.

2.3 For Applicants who are not a citizen or national of the United States and Applicants who are applying for an Identification Document pursuant to CO-RCSA, Exceptions Processing shall only be used to establish Identity and date of birth.

2.4 If an Applicant submits any source Document that reflects a name differing from the Applicant's Full Legal Name (for example through marriage, adoption, court order or other mechanism permitted by state law or regulation), the Department shall require evidence of the name change through the presentation of Documents issued by a court, governmental body, or other entity as determined by the Department.

2.5 The Department may resolve Minor Spelling Inconsistencies in, or slight misspellings of, a full legal name through Exceptions Processing if the totality of the evidence gathered demonstrates the Applicant's Identity and the resolution is not contrary to the public interest.

2.6 If the totality of evidence gathered through Exceptions Processing establishes the Applicant's Identity, date of birth, and U.S. citizenship (where applicable), the Applicant may be issued a Colorado Driver's License, Identification Card, or CO-RCSA Identification Document.

2.7 If the totality of evidence gathered through Exceptions Processing does not establish the Applicant's Identity, date of birth, and U.S. citizenship (where applicable), the Applicant shall be issued a Notice of Denial and thereafter may request a Hearing with the Hearings Section of the Department.

2.8 For Applicants who do not have an established residence, proof of residency Documents are waived~~,~~ if an Applicant provides a letter on letterhead, signed by an authorized staff member of a homeless shelter, certifying that the individual is homeless and is registered at the shelter.

3.0 Exceptions Processing to Establish Identity and Date of Birth for U.S. citizens.

3.1 The following Documents or combination of Documents may be used to establish an Applicant's Identity and date of birth:

3.1.1 A U.S. Passport expired no more than 10 years.

3.1.2 A Driver's License or Identification Card issued by any state, including a state that does not require proof of lawful presence to obtain such Document, that either has not expired or that expired within the last 10 years.

3.1.3 A military identification card or common access card expired no more than 10 years issued by the U.S. Department of Defense that bears a photograph of the Applicant. Such identification cards include active duty, retiree, National Guard, and dependent identification cards.

3.1.4 A life, health, or other insurance record that bears the Applicant's full legal name, date of birth, and place of birth.

3.1.5 An identification card issued within the last 20 years by the Bureau of Indian Affairs or by a federally recognized Native American Tribe, and verified by the issuing authority, that bears a photograph of the Applicant, provided the first and last name and date of birth match the first and last name and date of birth on the Document presented by the Applicant.

3.1.6 A Veteran's Administration card that bears a photograph of the Applicant and was issued within the last 20 years.

3.1.7 An identity card issued by the Federal Bureau of Prisons or any State Department of Corrections, verified by the issuing authority, provided the first and last name and date of birth match the first and last name and date of birth on the Document presented by the Applicant.

3.1.8 A valid individual Colorado or federal U.S. income tax return, with an Applicant's copy of an Internal Revenue Service form W-2 or 1099. Validity shall be determined using the SSOLV system. If the SSN on the Document provided is not validated by the SSOLV system, then the Document shall be deemed invalid.

3.1.9 An Affidavit of Identity that includes the name or names by which the Applicant is known.

3.1.9.1 The affiant must present the affidavit in person, provide identification, and sign the affidavit in the presence of a Department employee.

3.1.9.2 The affiant must be an employee of a government or non-profit agency registered by the Department with proof of agency affiliation.

3.1.9.3 The Affidavit of Identity shall be used only for Applicants who can demonstrate U.S. Citizenship.

3.1.10 Any Document that is secure and verifiable pursuant to section 24-72.1- 102(5), C.R.S., as determined by the Department, and which establishes evidence of the Applicant's Identity or date of birth.

4.0 Exceptions Processing for U.S. Citizens Using Alternative Documents to Establish U.S. Citizenship.

4.1 An Applicant may use alternative Documents to establish U.S. citizenship.

4.2 The following Documents or combination of Documents may be accepted in support of an Applicant seeking to establish U.S. citizenship:

4.2.1 A certified Order of Adoption of the Applicant bearing the seal or certification of the court of any state, political subdivision, or territory of the United States, or a certified Order of Adoption of that Applicant bearing the seal or certification of the court where a valid adoption took place abroad, so long as the same adoption was the basis of the Applicant's admission into the United States as a legal permanent resident. Any adoption decree must include the date and location of the adoptee's birth.

4.2.2 A U.S. passport expired no more than 10 years.

4.2.3 A hospital birth record that includes the name and date of birth.

4.2.4 Any secure and verifiable Document, that serves to provide evidence of the Applicant's U.S. citizenship.

5.0 Exceptions Processing to Establish Identity and Date of Birth for Non-Citizens with Permanent Lawful Presence.

5.1 The following Documents or combination of Documents may be used to establish an Applicant's Identity and/or date of birth:

5.1.1 A Driver's License or Identification Card issued by any state, including a state that does not require proof of lawful presence to obtain such Document, that either has not expired or that expired within the last 10 years.

5.1.2 A military identification card or common access card expired no more than 10 years issued by the U.S. Department of Defense that bears a photograph of the Applicant. Such identification cards include active duty, retiree, National Guard, and dependent identification cards.

5.1.3 A life, health, or other insurance record that bears the Applicant's full legal name, date of birth, and place of birth.

5.1.4 A Veteran's Administration card that bears a photograph of the Applicant and was issued within the last 20 years.

5.1.5 An identity card issued by the Federal Bureau of Prisons or any State Department of Corrections, provided the first and last name and date of birth match the first and last name and date of birth on the Document presented by the Applicant.

5.1.6 A valid individual Colorado or federal income tax return, with an Applicant's copy of an Internal Revenue Service form W-2 or 1099. Validity shall be determined using the SSOLV system. If the SSN on the Document provided is not validated by the SSOLV system, then the Document shall be deemed invalid.

5.1.7 A DHS certified photocopy of a foreign passport.

5.1.8 A U.S. Department of State or Department of Homeland Security travel authorization document with photograph.

5.1.~~7~~9 Any Document that is secure and verifiable pursuant to section 24-72-1-102(5), C.R.S., as determined by the Department, which establishes evidence of the Applicant's Identity or date of birth.

6.0 Exceptions Processing to Establish Identity and Date of Birth for Non-Citizens Who Cannot Demonstrate Lawful Presence or Non-Citizens Who Can Demonstrate Temporary Lawful Presence.

6.1 The following Documents or combination of Documents may be used by an Applicant to establish Identity and/or date of birth

6.1.1 A Driver's License or Identification Card issued by any state, including a state that does not require proof of lawful presence to obtain such Document, that has not expired or that has expired within the last ten years.

6.1.2 A military identification card or common access card issued by the U.S. Department of Defense that contains a photograph of the Applicant that has expired within the previous 10 years. Such identification cards include active duty, retiree, National Guard, and dependent identification cards.

6.1.3 A Veteran's Administration card issued within the last 20 years that bears a photograph of the Applicant.

6.1.4 An identification card issued by the Federal Bureau of Prisons or any State Department of Corrections provided that the first and last name and date of birth match the first and last name and date of birth on the Document presented by the Applicant.

6.1.5 A life, health, or other insurance record that bears the Applicant's name, date of birth, and place of birth.

6.1.6 A DHS certified photocopy of a foreign passport.

6.1.7 A U.S. Department of State or Department of Homeland Security travel authorization document with photograph.

6.1.~~6~~8 Any other Document that is secure and verifiable pursuant to section 24-72.1-102(5), C.R.S., which serves to provide evidence of the Applicant's identity or date of birth as determined by the Department.

7.0 Process for Translation

7.1 All Documents provided to the Department by the Applicant shall be in English or have been translated into English.

7.2 The original and corresponding translated Documents shall be presented together at the time of application.

7.3 All documents translated must have the following included at the end (must be typed or electronically printed on the same page as the translation, not on separate pieces of paper or the translation will not be accepted by the Department):

7.3.1 An attestation that states: “I, [insert translator’s full name], affirm that the foregoing is a complete and accurate translation from [insert foreign language] to the English language to the best of my ability. I further affirm that I am fully competent to translate from [insert foreign language] to the English language and that I am proficient in both languages” and

7.3.2 The number and state of issuance of the translator’s unexpired Driver’s License, Identification Card or CO-RCSA identification Document.

7.4 All translated Documents and information required by rule 8.3 shall be included in the Applicant’s permanent motor vehicle record.

7.5 Applicants are responsible for all costs of translation.

8.0 Denial of Application

8.1 If an application is incomplete or the Applicant has failed to provide Documents verifiable by the Department for Identity, date of birth or U.S. citizenship, the Department may provide a Notice of Denial.

8.2 Nothing in this regulation shall be construed to prevent the Department from denying an application on the basis that an Applicant has presented Documents that are fraudulent or that are not secure and verifiable.

8.3 Nothing in this regulation restricts or prohibits the Department from verifying any Documents presented by an Applicant.

8.4 An application may be denied or canceled if the Applicant presents fraudulent or altered Documents or commits any other fraud in the application process. If the authenticity of a Document cannot be verified, then the application may be considered incomplete and additional documentation may be required.

9.0 Hearing and Final Agency Action

9.1 An Applicant who has received a Notice of Denial may, within 60 days of the date of the Notice of Denial, request a Hearing on the denial by filing a written request for Hearing with the Hearings Section of the Department at 1881 Pierce St. Entrance B, #112, Lakewood, CO 80214.

9.2 Hearings shall be held in accordance with the provisions of the State Administrative Procedure Act and the provisions of Title 42 of Colorado Revised Statutes.

9.3 The only issue at Hearing shall be whether the Applicant has satisfied federal and state requirements for the issuance of a Colorado Driver’s License, Identification Card, or CO-RCSA Identification Document.

9.4 The hearing officer shall issue a written decision. If the hearing officer finds that the Applicant has not satisfied state and federal requirements for the issuance of a Colorado

Driver’s License, Identification Card, or CO-RCSA Identification Document, then the denial shall be sustained. If the hearing officer finds that Applicant has satisfied state and federal requirements for the issuance of a Colorado Driver’s License, Identification Card, or CO-RCSA Identification Document, then the denial shall be rescinded and the Department shall issue a Colorado Driver’s License, Identification Card, or CO-RCSA Identification Document.

9.5 The decision by the hearing officer shall constitute final agency action, and is subject to judicial review as provided by section 24-4-106, C.R.S.

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: 2023-00213

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

Division of Motor Vehicles

on 11/21/2023

1 CCR 204-30

DRIVER'S LICENSE-DRIVER CONTROL

The above-referenced rules were submitted to this office on 11/27/2023 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.

December 07, 2023 08:22:55

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-2

Rule title

1 CCR 207-2 SPORTS BETTING REGULATIONS 1 - eff 01/14/2024

Effective date

01/14/2024

SPORTS BETTING REGULATIONS

1 CCR 207-2

BASIS AND PURPOSE FOR RULE 5

The purpose of Rule 5 is to establish the types of sports betting activities to be conducted by sports betting licensees, including to establish and provide the specific information required to request the authorization of new sports events; to establish the prohibited sports events; to establish the sports events previously authorized; and to establish procedures and fee requirements for sports betting licensees to offer betting on sports events. The statutory basis for Rule 5 is found in sections 44-30-201, C.R.S., 44-30-202, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., and part 15 of article 30 of title 44, C.R.S.

RULE 5 AUTHORIZED SPORTS BETTING ACTIVITIES

5.4 Fixed Odds or Price on Horse Wagering.

(1) For the purposes of this Rule 5.4 only:

(a) "The governing body" means the racing commission, governmental or other organization that is entrusted with the regulatory duty to ensure integrity of the outcome, from the racetrack where the race is contested.

Note to publisher: Paragraph (1)(b) should remain a part of this Regulation.

(2) Sports betting licensees may request, under specific conditions, that the Commission authorize Horse Racing as sports events and bets. Any approval of Horse Racing as sports events and bets will be specific to the sports betting licensee requesting the event or bet.

(3) On the application for Horse Racing as sports events and bets, sports betting licensees must affirm the licensees have received consent from the following parties:

Note to publisher: Paragraph (3)(a) and all subparagraphs should remain a part of this Regulation.

(b) To offer horse racing events that occur outside the state of Colorado, but inside the United States, as a sports event, sports betting licensees must affirm the licensees have received consent from the following parties:

(v) The association that represents the horse persons competing at the racetrack where the race is conducted. This consent may be a part of the consent provided by the consent received in 5.4(3)(b)(iv).

Note to publisher: All previously existing subparagraphs of paragraph (3)(b) as well as paragraph (3)(c) and all subparagraphs should remain a part of this Regulation.

Note to publisher: Paragraphs (4) and (5) and all subparagraphs should remain a part of this Regulation.

(6) The application shall be in a form as specified by the Division, including:

(a) The name of the horse meet, sport event(s) or race;

Note to publisher: Paragraphs (6)(b) through (6)(d) should remain a part of this Regulation.

(7) The Director or Director's designee will consider the following factors prior to determining whether to authorize Horse Racing as sports events:

Note to publisher: All previously existing subparagraphs of paragraph (7) should remain a part of this Regulation.

Note to publisher: Paragraphs (8) through (10) and all subparagraphs should remain a part of this Regulation.

(11) The Director or Director's designee may request the consent of the Colorado Racing Commission in advance for the conduct of sports betting on Horse Racing as sports events and bets, for all sports betting operations, to fulfill the requirements of the consent needed in 5.4(3).

Note to publisher: Paragraph (12) should remain a part of this Regulation.

(13) This Rule 5.4 will expire twenty-four (24) months from the approval date of this Rule 5.4, unless otherwise repealed or extended by the Limited Gaming Control Commission prior to the expiration date. Any hearing, investigation, accusation, or other matter initiated by or pending before the Commission or the division of gaming prior to the expiration date will continue until completion of such matter including any associated administrative proceedings. Any and all authorizations for sports events that are authorized pursuant to this Rule 5.4 are voided as of the expiration date, twenty-four (24) months from the approval date of this Rule 5.4, unless otherwise repealed or extended by the Commission prior to the expiration date.

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: 2023-00694

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

Division of Gaming - Rules promulgated by Gaming Commission

on 11/16/2023

1 CCR 207-2

SPORTS BETTING REGULATIONS

The above-referenced rules were submitted to this office on 11/16/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 06, 2023 09:24:09

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-3

Rule title

1 CCR 207-3 RULES OF FANTASY CONTEST OPERATOR LICENSING AND REGISTRATION 1 - eff 01/14/2024

Effective date

01/14/2024

DEPARTMENT OF REVENUE

DIVISION OF GAMING

RULES OF FANTASY CONTEST OPERATOR LICENSING AND REGISTRATION

1 CCR 207-3

BASIS AND PURPOSE FOR RULE 1

The purpose of Rule 1 is to provide definitions of various terms used throughout the Fantasy Contest Operator Rules of the Colorado Division of Gaming so that the Rules can be uniformly applied and understood. The definitions in 44-30-103, C.R.S. and 44-30-1501, C.R.S. shall also apply throughout this document. The statutory basis for Rule 1 is found in sections 44-30-1604(1), C.R.S., 44-30-203, C.R.S., and Part 16 of Article 30 of Title 44, C.R.S.

RULE 1 GENERAL RULES AND REGULATIONS

1.1 Scope and purpose.

These Rules are promulgated in order to carry out the powers and duties of the Director of the Division of Gaming, Department of Revenue (“Director”) pursuant to Article 30 of Title 44, C.R.S., for the purpose of licensure or registration of fantasy contest operators and to ensure the integrity of fantasy contests conducted in the State of Colorado. These Rules shall be binding on every person authorized to operate as a fantasy contest operator or a small fantasy contest operator in Colorado. All persons licensed or registered under Article 30 of Title 44, C.R.S., are charged with having knowledge of the existence of these Rules and shall be deemed to be familiar with their provisions and to understand the Rules.

These Rules are severable. If one Rule or portion of a Rule is found to be invalid, all other Rules or portions of Rules that can be enforced without the invalid Rules shall be enforced and shall remain valid.

These Rules are not intended, and shall not be construed, to affect or limit in any way the jurisdiction or regulation of any individual or entity by any federal, state, or local government or subdivision thereof, including but not limited to the Colorado Department of Revenue and its Divisions.

1.2 Definitions.

All terms defined in sections 44-30-103, C.R.S., and 44-30-1501, C.R.S., shall have the same meaning in these Rules. In addition, as used in Article 30 of Title 44, C.R.S., and these Rules:

(1) “Active patron account" means a patron's account that has the patron's email address on file with the fantasy contest operator, a residential address in Colorado, and has paid an entry fee for a fantasy contest, agreed to pay an entry fee for a fantasy contest, or has made a monetary deposit to the patron's account within the past 365 days.

(2) “Applicant” means any individual or entity that has applied for an initial license or registration or a renewal license or registration to operate in Colorado as a fantasy contest operator or a small fantasy contest operator. The applicant shall be the individual or entity that is responsible for the financial and contractual obligations of the fantasy contest provider.

(3) “Beginner player,” as used in section 44-30-1607(1)(h), C.R.S., means any fantasy contest patron who has entered fewer than fifty-one contests offered by a single fantasy contest provider and who does not meet the definition of highly experienced player by virtue of having won more than three fantasy contest prizes of $1,000 or more from that single fantasy contest provider.

(4) "Cash equivalent" means an electronic funds transfer, credit card, debit card, check, wire transfer, crypto currency, winnings, promotional or bonus credit, and any other form of payment as approved by the Division.

(5) "Director" means the Director of the Division of Gaming or the Director's designee.

(6) "Division" means the Division of Gaming in the Department of Revenue.

(7) "Entry fee" means cash or a cash equivalent that is required to be paid by a fantasy contest patron to a fantasy contest provider in order to participate in a fantasy contest.

(8) "Fantasy contest provider" means both a fantasy contest operator licensee and a small fantasy contest operator registrant, as well as their employees and agents, unless specifically mentioned.

(9) "Highly experienced player," as used in section 44-30-1607(1)(h), C.R.S., means any fantasy contest patron who has: (a) entered more than 1,000 contests offered by a single fantasy contest provider; or (b) has won more than three fantasy contest prizes valued at $1,000 or more from that single fantasy contest provider. Once a fantasy contest patron is classified as highly-experienced player, the patron will remain classified as such.

(10) "Inactive patron account" means a patron's account where the patron has not paid an entry fee for a fantasy contest, agreed to pay an entry fee for a fantasy contest, or made a monetary deposit to the patron's account within the past 365 days, but the patron has logged into the account within the last three (3) years calculated from the patron's last log-in date.

(11) "Internal controls" means the minimum level of operational controls developed by a fantasy contest provider to ensure the integrity of fantasy contests.

(12) "Prize," as used in Article 30 of Title 44, C.R.S., means anything of monetary value, including but not limited to, money, cash equivalents, merchandise, or admission to another contest in which a prize may be awarded.

(13 "Script," as used in section 44-30-1607(1)(i), C.R.S., means commands that a fantasy contest-related computer program can execute that are created by fantasy contest patrons (or by third parties for the use of fantasy contest patrons to automate processes in a fantasy contest.

(14)

(a) "Sporting event" means:

(i) Any individual or team sport or athletic event in which the outcome is not determined solely by chance, whether amateur or professional, including an Olympic or international sport or athletic event and any collegiate sports event;

(ii) Any portion of a sport or athletic event listed in subsection (13)(a) of this section;

(iii) The individual performance of athletes in a sports event or combination of sports events;

(iv) Any sanctioned motorsport as authorized by the Division;

(v) Professional electronic sports or video games sanctioned by a sports governing body as an electronic competition; and

(vi) Any other sports event or combination of sports events as authorized by the Division.

(b) “Prohibited Sporting Event" includes high school or youth sports.

(15) "Utilization of statistics" means the method or formula in which fantasy points are accumulated based on the statistical results of the performance of athletes in sporting events.

1.3 Authorized fantasy contests.

Fantasy contests offered pursuant to Part 16, Article 30 of Title 44, C.R.S., shall comply with all of the following requirements:

(1) Fantasy contests must require an entry fee, offer a prize(s) to the patron(s), and have the winning outcome based on the utilization of statistics from multiple athletes.

(2) Fantasy contests are contests where patrons compete against other patrons. Fantasy contests where patrons compete against fantasy contest providers are prohibited.

(3) Fantasy contests must include the following:

(a) The selection of a minimum of two athletes or positions, or the utilization of statistics from a minimum of two athletes or positions.

(b) The outcome of the contests must be based on adding together the accumulated statistical results from at least two athletes or positions.

(4) Fantasy contests may be of any duration but must specify a beginning and end.

(5) The winning outcome of a fantasy contest cannot be based on the score, point spread, or any performance of any single actual sports team or combination of the teams.

(6) Fantasy contests that are free to all participants and do not require an entry fee are not regulated as fantasy contests.

BASIS AND PURPOSE FOR RULE 2

The purpose of Rule 2 is to enable applications and licensure as related to fantasy contest providers, including to establish and provide the specific information required on license applications, renewals, and license fees for each type of license. The statutory basis for Rule 2 is found in sections 24-4-105(11), C.R.S., 44-30-203(2)(a.5), C.R.S., 44-30-1605, C.R.S., 44-30-1606, 44-30-1607, C.R.S., and Part 16 of Article 30 of Title 44.

RULE 2 APPLICATIONS AND LICENSURE

2.1 Categories.

(1) The Division has two categories of fantasy contest operators based on the number of active patrons.

(a) Small fantasy contest operators.

(i) Small fantasy contest operators have 7,500 or fewer active patron accounts over the preceding 365 days.

(ii) Small fantasy contest operators are required to apply for registration with the Division.

(b) Fantasy contest operators.

(i) Fantasy contest operators have more than 7,500 active patron accounts over the preceding 365 days.

(ii) Fantasy contest operators are required to apply for licensure with the Division.

(2) Small fantasy contest operator registrations and fantasy contest operator licenses will expire on July 31 and not exceed a two-year period.

(3) The fee for registration and licensure shall be the following:

(a) Small fantasy contest operator registration:

(i) Initial application fee $350.

(ii) Renewal fee $350.

(b) Fantasy contest operator license:

(i) Initial application fee $15,000.

(ii) Renewal fee $15,000.

2.2 Application for registration.

(1) Registrant Name

(a) Registrants shall not operate as a small fantasy contest operator using a name that has not been provided to the Director.

(b) If a registrant operates as a small fantasy contest operator under a trade name, such trade name must be filed with the Colorado Secretary of State pursuant to section 7-71-101, C.R.S.

(c) All names under which a registrant operates as a small fantasy contest operator (including business, assumed, or trade names) shall be provided to the Director.

(2) A small fantasy contest operator must apply for registration with the Division. An applicant for registration must:

(a) Submit a completed application for registration on a form and in a manner approved by the Division.

(b) Submit with the application all fees established by the Director.

(c) Submit documentation validating the number of fantasy contest players in Colorado with active patron accounts. The number of said patrons shall not exceed 7,500, pursuant to

section 44-30-1603(7), C.R.S. The documentation shall comprise customer base data from the 365 days preceding the date of application submission.

(d) Submit detailed information about the nature and type of fantasy contests to be offered by the applicant and the utilization of statistics with examples of all information and materials to be provided to contestants.

(e) Submit additional information as may be requested by the Division to evaluate the applicant's qualification for registration. An application submitted without the required fees and documentation will be considered incomplete.

(3) If a registered small fantasy contest operator at any time exceeds 7,500 active patron accounts, the fantasy contest operator must apply for licensure. The applicant must notify the Division within twenty (20) days of exceeding 7,500 active patron accounts, and shall have forty five (45) days from notifying the Division to submit an application for licensure. If, after licensure, the fantasy contest operator drops below 7,500 active patron accounts, the applicant may submit an application for registration at the time of renewal instead of renewing licensure.

2.3 Application for licensure.

(1) Licensee Name

(a) Licensees shall not operate as a fantasy contest operator using a name that has not been provided to the Director.

(b) If a licensee operates as a fantasy contest operator under a trade name, such trade name must be filed with the Colorado Secretary of State pursuant to section 7-71-101, C.R.S.

(c) All names under which a licensee operates as a fantasy contest operator (including business, assumed, or trade names) shall be provided to the Director.

(2) A fantasy contest operator that has more than 7,500 active patron accounts in Colorado, must apply for licensure with the Division. An applicant for licensure must:

(a) Submit a completed application for licensure on a form and in a manner approved by the Director;

(b) Submit with the application all fees established by the Director;

(c) Attest to the validity of the information listed on the application;

(d) Submit a written oath or affirmation on the form and in the manner prescribed by the Director;

(e) Submit the information required by section 44-30-1606(2)(c), C.R.S.,

(f) Submit detailed information about the nature and type of fantasy contests to be conducted by the applicant and the utilization of statistics with examples of all information and materials to be provided to contestants.

(g) Submit additional information as may be requested by the Director to evaluate the applicant's qualification for licensure. An application submitted without the required fees and documentation will be considered incomplete.

(3) If a fantasy contest operator drops below 7,500 active patron accounts in Colorado, the applicant may submit an application for registration as a small fantasy contest operator instead of renewing licensure.

2.4 Renewal and reinstatement of registration or licensure.

(1) Fantasy contest providers must submit renewal applications for registration or licensure renewal to the Division at least forty-five (45) days prior to the respective registration or license expiration date.

(2) An applicant for registration and license renewal must:

(a) Submit a completed, signed application for registration or licensure renewal on a form and in a manner approved by the Division;

(b) Submit the results of the annual independent audit and/or internal controls review, conducted pursuant to section 44-30-1607(2), C.R.S.;

(i) The audit may be an annual financial audit of the operator's previous fiscal year-end financial statements by an independent certified public accountant; or

(ii) The audit may be an annual compliance attestation completed by an independent certified public accountant or other professional service provider authorized by the Director to verify compliance with the part 16, article 30, title 44, C.R.S., and the Rules and Regulations promulgated thereunder.

(c) Submit the aggregate amount of money paid by Colorado patrons in entry fees to fantasy contests over the previous calendar year; and,

(d) Submit all fees established by the Director.

(3) If an applicant fails to submit their completed renewal application when due, the applicant shall not be considered to have made a timely and sufficient application for renewal, as such term is used in section 24-4-104(7), C.R.S., and the license or registration shall expire.

(a) The applicant shall cease operations until their registration or license has been reinstated.

(b) The applicant may be subject to administrative action.

(4) In order to reinstate an expired registration or license, an applicant must:

(a) Submit a completed application for reinstatement on a form and in a manner approved by the Director;

(b) Submit an independent audit to ensure compliance with part 16 as required by 44-30-1607(2), C.R.S.;

(c) Submit all fees established by the Director; and

(d) Adhere to any administrative action imposed by the Director.

(5) If a fantasy contest provider chooses not to renew their license or registration, the fantasy contest provider will not be allowed to reapply for a license or registration for a period of one year unless

in addition to a new application, the requirements set forth in (2)(b) and (2)(c) of this regulation 2.4 are met.

2.5 Untrue statements.

(1) An applicant for fantasy contest operator license or small fantasy contest registration shall not make any false statements or fail to disclose any facts requested in connection with an application or any communication with the Division.

(2) The Director may refuse to grant a license or registration to an applicant who makes deliberate misstatements, deliberate omissions, misrepresentations, or untruths in any application or in connection with the applicant's background investigation.

2.6 Approval with conditions or for a limited period.

The Director may grant a registration or license with special conditions or for a limited period, or both.

2.7 Requirements for non-renewal years.

Per Rule 2.1(2), fantasy contest operator licenses and registrations are valid for up to two years. In the off year in which a renewal application is not required, fantasy contest providers must submit the results of their annual independent audits and/or internal control reviews, conducted pursuant to section 44-30-1607(2), C.R.S., by July 31.

(1) The audit may be an annual financial audit of the provider's fiscal year-end financial statements by an independent certified public accountant; or

(2) The audit may be an annual compliance attestation along with the results completed by an independent certified public accountant to verify compliance with the part 16, article 30, title 44, C.R.S., and the Rules and Regulations promulgated thereunder.

2.8 Petitions for declaratory order.

(1) Any person may petition the Director for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any provision of Article 30 of Title 44, C.R.S., or of any rule or order of the Director.

(2) The Director will determine, in his or her discretion and without notice to petitioner, whether to rule upon any such a petition. The Director shall promptly notify the petitioner of his or her action and state the reasons for such action.

(3) In determining whether to rule upon a petition filed pursuant to this Rule, the Director will consider the following matters, among others:

(a) Whether a ruling on the petition will terminate a controversy or remove uncertainties.

(b) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Director or a court involving one or more of the petitioners.

(c) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Director or a court but not involving any petitioner.

(d) Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

(e) Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colorado Rules of Civil Procedure, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule, or order in question.

(4) Any petition filed pursuant to this Rule shall set forth the following:

(a) The name and address of the petitioner and whether the petitioner is registered or licensed pursuant to sections 44-30-1605 or 44-30-1606, C.R.S.

(b) The statute, rule, or order to which the petition relates.

(c) A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

(5) If the Director determines that he or she will rule on the petition, the following procedure shall apply:

(a) The Director may rule upon the petition based solely upon the facts presented in the petition. In such a case:

(i) Any ruling of the Director will apply only to the extent of the facts presented in the petition and any amendment to the petition.

(ii) The Director may order the petitioner to file a written brief, memorandum, or statement of position.

(iii) The Director may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.

(iv) The Director may dispose of the petition on the sole basis of the matters set forth in the petition.

(v) The Director may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.

(vi) The Director may take administrative notice of facts pursuant to the State Administrative Procedure Act and may utilize available experience, technical competence and specialized knowledge in the disposition of the petition.

(vii) If the Director rules upon the petition without a hearing, the Director shall promptly notify the petitioner of the decision.

(b) The Director may, in his or her sole discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Director intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the

nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Director to consider.

(6) The parties to any proceeding pursuant to this Rule shall be the Director and the petitioner. Any other person may seek leave of the Director to intervene in such a proceeding and leave to intervene will be granted at the sole discretion of the Director. A petition to intervene shall set forth the same matters as required by Rule 2.8(3)(D). Any reference to a "petitioner" in this Rule also refers to any person who has been granted leave to intervene by the Director.

(7) Any declaratory order or other order disposing of a petition pursuant to this Rule shall constitute final agency action subject to judicial review pursuant to section 24-4-106, C.R.S.

BASIS AND PURPOSE FOR RULE 3

The purpose of Rule 3 is to specify the rights, responsibilities, and duties of fantasy contest providers in regard to the lawful methods of operation, discovery of violations, changes in ownership and control, retention of records and access to the Division, advertising, and ceasing operations. The statutory basis for Rule 3 is found in sections 44-30-203, C.R.S., 44-30-204, C.R.S., 44-30-1604, C.R.S., 44-30-1605, C.R.S., 44-30-1607, C.R.S., 44-30-1608, C.R.S., 44-30-1610, C.R.S., and Part 16 of Article 30 of Title 44.

RULE 3 DUTIES OF FANTASY CONTEST PROVIDERS

3.1 Responsibilities of fantasy contest providers.

Responsibility for the employment and maintenance of lawful methods of operation rests with the fantasy contest provider, and willful or persistent use or toleration of methods of operation considered unlawful by the Division is prohibited. Each fantasy contest provider shall fully and timely perform each and every term, condition and duty required under Part 16, Article 30, of Title 44, C.R.S., and the Rules and Regulations promulgated thereunder governing fantasy contests.

3.2 Discovery of violations.

Fantasy contest providers must notify the Division within seventy-two (72) hours of the time the provider discovered or should have discovered any violation or suspected violation of Part 16, Article 30, of Title 44, C.R.S., the Rules and Regulations promulgated thereunder, security breaches, unintended disclosure of patron's personal information, suspicious activity, or any other criminal violation.

3.3 Duty to update information.

All fantasy contest providers shall notify the Division, in writing, with any change to information required in an application or renewal application within forty-five (45) days of the change. Such changes shall include, but not be limited to, changes in officers or directors, effective ownership of greater than 10%, and trade names.

3.4 Retention of Records.

Fantasy contest providers shall retain all books, records, and data relating to the operation and management of fantasy contests, as well as information sufficient to trace the deposits and withdrawals to a patron's account for at least three (3) years from the date of creation. A fantasy contest provider may petition the Director for approval to dispose of records prior to the three (3) year retention requirement.

3.5 Inspections.

A fantasy contest provider must immediately make available for inspection by the Division, or its agents or investigators, local sheriffs, or their agents or investigators, and police departments upon demand, all records produced, used or kept in connection with fantasy contests, and all portions of the premises where fantasy contest system is housed. Upon demand, employees and agents of the Division, must be given immediate access to any portion of their premises for the purpose of inspecting or examining records or documents, fantasy contest systems, or the conduct of fantasy contest activity.

3.6 Access to premises and production of records.

No fantasy contest provider may neglect or refuse to produce records or evidence or to give information upon demand by the Division. No fantasy contest provider shall interfere or attempt to interfere with lawful efforts by the Division to obtain or produce such information.

3.7 Advertising.

A fantasy contest provider shall not allow, conduct, or participate in any false or misleading advertising concerning its operations.

(1) In addition, all offers and bonuses must:

(a) Include terms and conditions that are full, accurate, clear, concise, transparent, and do not contain misleading information;

(b) Have advertising materials that include any material terms and conditions for that offer or bonus and have those material terms in close proximity to the headline claim of the offer or bonus and in reasonably prominent size;

(c) Not be described as free unless the patron does not have to risk, lose or deposit their own money;

(d) If the patron has to risk or lose their own money or has conditions attached to their own money, then the offer or bonus must disclose those terms;

(e) Not be described as risk free if the patron needs to incur any loss or risk their own money to use or withdraw winnings from the risk free contests; and

(f) Not restrict the patron from withdrawing their own funds or withdrawing winnings from contests placed using their own funds.

Providers shall implement commercially reasonable methods to ensure players that self-exclude shall not, while on the exclusion list, be able to redeem points, bonuses, comps or freeplay.

3.8 Closing of a fantasy contest operation; dissolution.

(1) A fantasy contest provider must notify the Division at least sixty (60) days prior to ceasing operations, or the change of ownership, or as soon as the operator knows that closing is imminent, whichever period is shorter.

(2) Within 30 days of notice to the Division, the fantasy contest provider must submit to the Division a closing plan regarding the disposition of patron accounts, funds in those accounts, and on- going fantasy contests.

(3) Upon the dissolution of a fantasy contest provider that is a corporation, company, partnership or association, the fantasy contest provider shall surrender their license or registration within 10 days of the dissolution effective date.

BASIS AND PURPOSE FOR RULE 4

The purpose of Rule 4 is to establish the requirements for patron accounts and to direct fantasy contest providers to establish internal control procedures. The statutory basis for Rule 4 is found in sections 44-30-203, C.R.S., 44-30-204, C.R.S., 44-30-1604, C.R.S., 44-30-1606, C.R.S., 44-30-1607, C.R.S., and 44-30-1610, C.R.S., and Part 16 of Article 30 of Title 44.

RULE 4 REQUIREMENTS OF FANTASY CONTEST PROVIDERS

4.1 Patron accounts.

(1) Account required.

(a) A fantasy contest provider shall use technologically reasonable measures to limit each patron to one (1) active account.

(b) A fantasy contest provider shall implement rules and publish procedures to terminate all accounts of any patron that knowingly and intentionally establishes or seeks to establish multiple active accounts, in contravention of this Rule, whether directly or by use of another person as a proxy.

(2) Account requirements.

Before a patron is allowed to enter a fantasy contest, a fantasy contest provider shall:

(a) Create an electronic patron file, which shall include at a minimum:

(i) The patron's legal name;

(ii) The patron's date of birth;

(iii) The patron's fantasy account number or username;

(iv) The patron's residential address; a post office box is not acceptable;

(v) The patron's electronic mail address;

(vi) The patron's telephone number;

(vii) Any other information collected from the patron used to verify his or her identity;

(viii) The method used to verify the patron's identity; and

(ix) The date of verification.

(b) Encrypt all of the following information contained in an electronic patron file:

(i) Any portion of the patron's Social Security number or equivalent identification number for a noncitizen patron, such as a passport or taxpayer identification number;

(ii) The patron's passwords and PINs; and

(iii) The patron's personal financial information.

(c) Record the patron's acceptance of the fantasy contest provider's terms and conditions.

(d) A fantasy contest provider must collect the patron's telephone number, as required under Rule 4.1(2)(a)(vi), from all patrons opening new accounts as of January 30, 2024. A fantasy contest provider must collect the patron's telephone number, as required under Rule 4.1(2)(a)(vi), from all patrons with active accounts by July 1, 2024. Fantasy contest providers are not required to collect patrons' telephone numbers, as required under Rule 4.1(2)(a)(vi), from all patrons with inactive or dormant accounts.

(3) Age and identity verification.

A full identity check and verification must be completed before a patron is allowed to enter a fantasy contest:

(a) Only patrons eighteen (18) years of age and older may deposit funds or participate in a fantasy contest.

(b) Patron verification must use commercially reasonable standards to confirm that the patron is not a prohibited participant.

(c) Third-party service providers may be used for age and identity verification of patrons.

(4) Transfer of funds prohibited.

A fantasy contest provider shall not permit a patron to transfer funds from their patron account to another patron's account.

(5) Account closure.

A fantasy contest provider shall provide a conspicuous and readily accessible method for a patron to close their account. Any balance remaining in a patron's account closed by a patron shall be refunded pursuant to the provider's internal controls.

(6) Patron account withdrawal.

(a) A patron must be allowed to withdraw funds maintained in his or her account, whether such account is open or closed.

(b) A fantasy contest provider must honor such patron request to withdraw funds within five (5) business days of the request, unless the conditions set forth in subsection (d) are met.

(c) A fantasy contest provider should use commercially reasonable standards to verify that the funds withdrawn pursuant to a patron request are transferred to an account in the name of the patron or mailed by check to the patron's address.

(d) A fantasy contest provider may decline to honor a patron request to withdraw funds if the provider believes in good faith that the patron engaged in either fraudulent conduct or

other conduct that would put the operator in violation of the law. In such cases, the fantasy contest provider shall:

(i) Provide notice to the patron of the nature of the investigation of the account; and

(ii) Conduct its investigation in a reasonable and expedient fashion, providing the patron additional written notice of the status of the investigation every tenth business day starting from the day the original notice was provided to the patron.

(e) For purposes of this provision, a request for withdrawal will be considered honored if it is processed by the fantasy contest provider notwithstanding a delay by a payment processor, credit card issuer, or the custodian of a financial account.

(7) Dormant patron accounts.

A fantasy contest provider shall consider a patron account to be dormant if the patron has not logged into the account for at least three (3) years calculated from the patron's last log-in date. A dormant account shall be closed by the fantasy contest provider.

(8) Unclaimed funds in a dormant patron account.

(i) Subject to the provisions of section 38-13-201, C.R.S., funds of patrons that remain in a dormant patron account shall be presumed abandoned.

(ii) The fantasy contest provider shall report and deliver all funds of patrons that are presumed abandoned to the office of the Colorado Department of the Treasury as provided in section 38-13-201, C.R.S.

(iii) At least sixty (60) days prior to reporting any funds of the patron to the Colorado Department of the Treasury, the fantasy contest provider shall provide notice to the patron's last known physical or email address and conduct due diligence to locate the patron.

4.2 Internal controls.

(1) Fantasy contest providers shall establish and adhere to internal controls that, at minimum, address compliance with the following:

(a) Monitoring, investigating, resolving, documenting, and reporting security incidents associated with information technology systems;

(b) Testing to ensure that the fantasy contest provider's platform meets or exceeds current industry standards;

(c) Protecting the privacy and online security of patrons and their accounts, including procedures preventing unauthorized withdrawals from patron accounts;

(d) Geolocation services to verify a patron's physical location;

(e) Suspending or banning the account of patrons who violate a fantasy contest provider's internal procedures, the rules or terms of a fantasy contest, or fantasy contest law;

(f) Providing fantasy contest patrons with access to information on responsible gaming;

(g) Mitigating the risk of fraud, cheating, and/or money laundering;

(h) Verifying the true identity of patrons;

(i) Handling patron complaints;

(j) Creating, updating, adjusting, and closing patron accounts;

(k) Closing out dormant patron accounts; and

(l) Procedures to address the consumer protections listed in section 44-30-1607(1), C.R.S., including:

(i) Preventing prohibited participants from competing in fantasy contests offered by the provider;

(ii) Preventing the sharing of confidential information that could affect a fantasy contest until the information is made public;

(iii) Verifying patrons are eighteen (18) years of age or older;

(iv) Allowing patrons to a voluntarily restrict themselves from entering fantasy contests program and preventing those individuals from entering fantasy contests;

(v) Clearly disclosing the maximum number of entries that a fantasy contest patron may submit to each fantasy contest and prevent patrons from exceeding that number;

(vi) Segregating fantasy contest patron funds from operation funds and maintaining a reserve for the benefit and protection of the funds;

(vii) Distinguishing highly experienced players from beginner players and ensuring that highly experienced players are clearly identified to all patrons;

(viii) Identifying authorized scripts that are made readily available to all fantasy contest players and detecting and preventing unauthorized scripts;

(ix) Clearly disclosing all rules governing the fantasy contests;

(x) Clearly disclosing the material terms of each promotional offer at the time the offer is advertised; and

(xi) Limiting each fantasy contest patron to one account.

(2) Fantasy contest providers shall submit a copy of their internal controls to the Division upon request.

BASIS AND PURPOSE FOR RULE 5

The purpose of Rule 5 is to specify the requirements of fantasy contest providers regarding responsible gaming and patron self-exclusion. The statutory basis for Rule 5 is found in sections 44-30-203, C.R.S., 44-30-204, C.R.S., 44-30-1604, C.R.S., 44-30-1607, C.R.S., and Part 16 of Article 30 of Title 44.

RULE 5 RESPONSIBLE GAMING AND SELF EXCLUSION

5.1 Display of responsible gaming logo.

Each fantasy contest provider's website or mobile application shall display a responsible gaming logo in a manner approved by the Director to direct a patron to the operator's responsible gaming webpage. The responsible gaming webpage shall be accessible to a patron throughout a patron session and shall contain, at a minimum, the following:

(1) A prominent message that states, “Gambling problem? Call or TEXT 1-800-GAMBLER”;

(2) A direct link to a website and other reputable internet resources dedicated to helping people with potential gambling problems, as approved by the Director; and,

(3) A clear statement of the fantasy contest provider's policy and commitment to responsible gaming along with a link to the provider's self-exclusion program.

5.2 Self-exclusion program.

(1) Each fantasy contest provider shall establish and maintain a self-exclusion program for patrons. The program shall be clearly accessible to patrons and include, at minimum, the ability for patrons to self-exclude from all fantasy contests.

(2) Fantasy contest providers shall make all reasonable efforts to ensure patrons that have self-excluded do not receive direct marketing or advertising material from the provider and/or the provider’s marketing affiliates.

BASIS AND PURPOSE FOR RULE 6

The purpose of Rule 6 is to establish procedures for patron disputes and citizen complaints. The statutory basis for Rule 6 is found in sections 44-30-203, C.R.S., 44-30-204, C.R.S., 44-30-1604, C.R.S., 44-30-1605, C.R.S., 44-30-1610, C.R.S., and Part 16 of Article 30 of Title 44.

RULE 6 PATRON COMPLAINTS

6.1 Patron Disputes.

(1) Fantasy contest providers shall develop and prominently publish procedures by which a patron may file a complaint with the provider about any aspect of the provider's operations.

(2) It is the responsibility of the fantasy contest provider to attempt to resolve all valid disputes directly with the patron.

(3) Whenever a fantasy contest provider refuses payment of alleged winnings to a patron or there is otherwise a dispute with a patron regarding their patron account, entries, wins, or losses from fantasy contests, and the provider and the patron are unable to resolve the dispute to the satisfaction of the patron, the provider shall notify the patron of their right to file a written complaint with the provider. The notice shall include the procedure for filing a written complaint and the complaint resolution process.

(4) Upon receipt of a written complaint, a fantasy contest provider shall investigate and provide a written response to the patron within ten (10) days. The response shall include a statement that if

the dispute is not resolved to the satisfaction of the patron, the patron may submit their complaint in writing to the Division within 30 days of receiving the response pursuant to Regulation 6.2.

6.2 Citizen complaints authorized.

Any person claiming that a fantasy contest provider has engaged in conduct violating a provision of Part 16, Article 30, of Title 44, C.R.S. or the Rules and Regulations promulgated thereunder may file a sworn written complaint to the Division on form designated by the Division. The complaint must completely detail the conduct and the specific fantasy contest statute or regulation or other legal requirement alleged to have been violated. The Division will notify the fantasy contest provider and any other affected parties of the complaint. Once notified, the fantasy contest provider has ten (10) business days to provide the Division a written response to the Complaint.

6.3 Dismissal of citizen complaint.

The Director must examine the complaint, any answer provided by the fantasy contest provider, and other supporting documents to determine whether the complaint has merit, is frivolous, or whether it charges conduct constituting grounds for disciplinary action. The Director may conduct any investigation deemed appropriate to make this decision.

(1) The Director may reject a complaint if it does not meet the requirements of this section.

(2) If the Director determines that the complaint is without merit, is frivolous, or does not charge conduct constituting grounds for disciplinary action, the Director may dismiss the complaint and notify the involved parties stating the reasons for dismissal.

(3) If the Director determines the complaint has merit, the Director may decide to initiate formal disciplinary proceedings where grounds exist to sustain their initiation.

BASIS AND PURPOSE FOR RULE 7

The purpose of Rule 7 is to establish procedures for disciplinary actions and the informal resolution of allegations of violations of the provisions of article 30 of title 44 C.R.S., or any Rules and Regulations promulgated thereunder, to provide procedures to impose sanctions for violations, and to provide for certain conditions to be met for reissuance of licenses to persons who formerly held a license. The statutory basis for Rule 7 is found in sections 24-4-104, C.R.S., 24-4-105, C.R.S., 44-30-203, C.R.S., 44-30-204, C.R.S., 44-30-1604, C.R.S., 44-30-1605, C.R.S., 44-30-1606, C.R.S., 44-30-1610, C.R.S., 44-30-1613, C.R.S., and Part 16 of Article 30 of Title 44.

RULE 7 DISCIPLINARY ACTION

7.1 Grounds for disciplinary action.

For the purposes of this Rule 7, the term "license" shall mean both a fantasy contest operator license and small fantasy contest operator registration.

The Director may fine, suspend, revoke, or otherwise modify any fantasy contest provider license issued or reissued by the Division for any violations by the fantasy contest provider, or the provider's employees or agents, of any of the provisions of Part 16, Article 30, of Title 44, C.R.S., or any of the Rules and Regulations promulgated thereunder except as limited in section 44-30-1605(2)(b)(II), C.R.S. Acceptance of a fantasy contest provider license or renewal thereof constitutes an agreement on the part of the fantasy contest provider to be bound by all the Rules and Regulations as the same now are or may

hereafter be amended or promulgated. It is the responsibility of the fantasy contest provider to keep self-informed of all such Rule and Regulations, and ignorance thereof will not excuse violations.

7.2 Initiation of disciplinary proceedings.

After an investigation by the Director, the Director determines that there is probable cause to believe that a fantasy contest provider violated any of the provisions of Part 16, Article 30, of Title 44, C.R.S., or the Rules and Regulations thereunder, or that violations by the fantasy contest provider of laws other than the fantasy contest laws make the provider no longer suitable for a license, the Director may order that an administrative hearing before the Hearings Division be held.

7.3 Informal consultation.

If the Director considers a citizen complaint, or any other allegations, to be grounds for disciplinary action, the Director may consult with the fantasy contest provider and the parties affected in an effort to resolve the matter satisfactorily without a formal hearing. The Director must notify the complainant, the fantasy contest provider, and affected parties of the results of the informal consultation. The informal consultation does not prevent the Director from conducting a formal hearing or administering disciplinary action against the provider.

7.4 Assurance of voluntary compliance.

The Director may accept an assurance of voluntary compliance regarding any act or practice alleged to violate Part 16, Article 30, of Title 44, C.R.S., or the Rules and Regulations thereunder, from a person who has engaged in, is engaging in, or is about to engage in such acts or practices. The assurance must be in writing and may include a stipulation for the voluntary payment of the costs of the investigation and an amount necessary to restore to a person money or property which may have been acquired by the alleged violator because of the acts or practices. An assurance of voluntary compliance may not be considered an admission of a violation for any purpose; however, proof of failure to comply with the assurance of voluntary compliance is prima facie evidence of a violation of Article 30 of Title 44, C.R.S., or the Rules and Regulation thereunder.

7.5 Criminal convictions as grounds for revocation or suspension.

The Director may revoke or suspend the fantasy contest provider license of any person who is convicted of a crime, even though the convicted person's post-conviction rights and remedies have not been exhausted, if the crime or conviction involves a felony.

7.6 Facts of criminal charge.

The charge in any jurisdiction of a fantasy contest provider with a felony is grounds for disciplinary action. The Director may find the provider guilty of a violation of this article based on the facts of the criminal charge even though the fantasy contest provider, or the provider's employee or agent, has been acquitted on the criminal charge.

7.7 Summary suspension.

(1) Where the Director has objective and reasonable grounds to believe and finds that a fantasy contest provider has been guilty of a deliberate and willful violation of any of the provisions of Article 30 of Title 44, C.R.S., or the Rules and Regulations thereunder, or that due to other violations of law by the fantasy contest provider or its patrons, the public health, safety, or welfare imperatively requires emergency action, and where the Director incorporates such findings in its order, the Director may summarily suspend the fantasy contest provider's license pending disciplinary proceedings for suspension or revocation. Any such disciplinary proceedings shall be promptly instituted and determined.

(2) The summary suspension of a license without notice pending a hearing shall be for a period not to exceed thirty (30) days except that a fantasy contest provider may waive the thirty (30) day hearing requirement by requesting a continuance in writing no later than five (5) business days prior to the scheduled hearing. In no event, however, shall the requested continuance be granted unless the fantasy contest provider requesting the continuance has complied with the order of summary suspension by surrendering such provider's license to the Division.

7.8 Conditions imposed for reissuance of license.

The Director may require a fantasy contest provider who formerly held a license to meet certain conditions before reissuing a license to that provider, including but not limited to the following:

(1) Restitution of money;

(2) Restitution of property; and

(3) Making periodic reports to the Director as required.

7.9 Costs.

(1) In addition to the sanction or denial of any license by the Director, the Director may direct the payment by the applicant or fantasy contest provider of any reasonable costs incurred by the Division, party, or witness.

(a) The Director may enter any such order of its own initiative, or upon timely application and showing by the Division or any other party or witness in the action prior to the expiration of any time for appealing the underlying order.

(b) The filing of such an application does not stay the effectiveness of the underlying order.

(2) Reimbursable costs shall include, but are not limited to: witness fees and per diem; expert witness fees; duplication costs; court reporter, transcription, and other costs incurred in administering or preserving any record; extraordinary staffing costs of the Division; legal fees; expenses incurred in commencing, accommodating, or conducting the hearing; investigative costs; exhibit costs; and any other judicially or statutorily recognized cost, whether incurred prior or subsequent to the conclusion of the investigation of the matter.

(3) The Director reserves the discretion to deny, in whole or in part, any request for reimbursement of costs.

(4) Unless otherwise ordered, costs must be paid to the ordered recipient on or before the thirtieth day from the date of the order awarding the costs, unless stayed by the Director or other court of competent jurisdiction. Failure to pay and tender costs as ordered shall constitute grounds for sanction, including fine and revocation of any license or other affirmative approval.

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: 2023-00679

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

Division of Gaming - Rules promulgated by Gaming Commission

on 11/30/2023

1 CCR 207-3

RULES OF FANTASY CONTEST OPERATOR LICENSING AND REGISTRATION

The above-referenced rules were submitted to this office on 12/04/2023 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.

December 14, 2023 09:47:41

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

3 CCR 702-4 Series 4-2 LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General) 1 - eff 01/30/2024

Effective date

01/30/2024

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Regulation 4-2-96

CONCERNING PRIMARY CARE ALTERNATIVE PAYMENT MODEL PARAMETERS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-107(3.5), 10-16-109, and 10-16-157, C.R.S.

Section 2 Scope and Purpose

The purpose of the regulation is to establish primary care alternative payment model parameters for primary care services offered through health benefit plans.

Section 3 Applicability

This regulation applies to all carriers marketing and issuing non-grandfathered individual, small group, and/or large group health benefit plans in Colorado on or after January 1, 2025. This regulation excludes individual short-term health insurance policies, as defined in § 10-16-102(60), C.R.S.

Section 4 Definitions

A. “Aligned quality measures set” means, for the purposes of this regulation, the Adult and Pediatric measure sets included in Appendix C of this regulation.

B. “Alternative payment model” or “APM” shall have the same meaning as found at § 10-16-157(2)(b), C.R.S.

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

D. “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.

E. “Measure steward” means, for the purposes of this regulation, an individual or organization that owns a measure and is responsible for maintaining the measure.

F. “Patient attribution” means, for the purposes of this regulation, the method used to determine which primary care practice is responsible for a patient’s care and costs.

G. “Practice panel” means, for the purposes of this regulation, the unique patients who have seen any provider within a primary care practice within the last 18 months.

H. “Primary care” shall have the same meaning as found at § 10-16-157(2)(c), C.R.S.

I. “Primary care provider” or “provider” means, for the purposes of this regulation, the provider taxonomies identified in Appendix A, when the provider is practicing general primary care in an outpatient setting.

J. “Prospective payment” shall have the same meaning as found at § 10-16-157(2)(f), C.R.S.

K. “Risk adjustment” shall have the same meaning as found at § 10-16-157(2)(g).

Section 5 General Requirements

A. Carriers must incorporate the requirements set forth in Sections 6 - 9 of this regulation in APMs for primary care services offered through health benefit plans issued or renewed on or after January 1, 2025.

B. Carriers offering managed care plans that are issued or renewed on or after January 1, 2025, and in which services are primarily offered through one medical group contracted with a nonprofit health maintenance organization, must incorporate the requirements of Section 9 only in contracts with providers participating in the carrier’s primary care APM.

Section 6 Risk Adjustment

A. Carriers must provide a detailed description of the risk adjustment methodology(ies) utilized in an APM for primary care services to all providers participating in the APM. This description must include, at a minimum:

1. Definitions of key terms used to describe the methodology, including “concurrent” and “prospective”;

2. A description of the data that is used in the methodology, including but not limited to:

a. The general morbidity assumptions associated with the population used to calibrate the model; and

b. The services included in the calculation of risk scores, based on the payment arrangement used in the APM in which the provider is participating; and

3. A description of adjustments made to the data in risk adjustment calculations, including:

a. Historical adjustments;

b. Trends or future adjustments; and

c. Patient mix adjustments (across providers).

B Carriers must also provide a description of how the risk adjustment methodology interacts with provider payments, including but not limited to:

1. A clear explanation of any retrospective uses of provider data; and

2. For risk adjustment methodologies that are applied at the end of a contract period, a clear explanation of any reconciliation processes and how and when they are applied.

Section 7 Patient Attribution

A. Carriers must provide a detailed description of the patient attribution methodology(ies) utilized in an APM for primary care services to all providers participating in the APM. This description must include, at a minimum:

1. Definitions of key terms used in the model, including but not limited to “prospective”, “retrospective”, or “hybrid”; and

2. The process(es) used to attribute adult and pediatric members, including newborns and infants, to a provider. This description must include, at a minimum:

a. How patient choice is prioritized;

b. If and how claims are used to determine a provider-patient relationship, including but not limited to:

(1) the look-back period for claims data that is included in the methodology;

(2) the type (e.g., wellness visit) or number of claims that are prioritized; and

(3) tie-breaker methodologies if different providers have an equal number or type of claims;

c. If and how geographic attribution is used;

d. Any other processes or methods, such as visit-based, that are utilized; and

e. Any members that are excluded from attribution.

B. Carriers must make available updated attribution lists, in a format that is easy to interpret and analyze, to providers no less frequently than on a quarterly basis.

C. Carriers must establish and maintain a process for providers to submit requests for misattributed patients to be added or removed from their attribution list (i.e., reattributed).

1. The process for submitting reattribution requests must be clearly communicated to the provider and must identify, at a minimum:

a. The appropriate mechanism(s) for submitting a request (e.g., phone, mail, or electronic);

b. A specific point of contact for attribution-related questions and issues; and

c. The information or documentation required to submit a request.

2. Carriers must establish a process that is clearly communicated to the provider about the regular review, no less than quarterly, of patient attribution lists and provider attribution requests.

Section 8 Aligned Core Competencies

A. Carriers must incorporate the aligned core competencies contained in Appendix B into the care delivery expectations used in APMs for primary care services.

1. Carriers must provide a simple attestation form for practices to identify the appropriate Track (Track 1, 2 or 3) as set forth in Appendix B that aligns with current or anticipated practice competence with the financial support of the APM.

2. Carriers must accept a practice's current association with the Centers for Medicare and Medicaid Services' Making Care Primary or Primary Care First models, Primary Care Medical Home designation, and National Committee for Quality Assurance's Behavioral Health Integration certification as recognition that the practice is, at minimum, ready to participate in an APM in Track 1.

B. Payments to support, incentivize, or reward provider performance of the competencies in the aligned core competencies must be meaningful. Carriers may determine the level and type of financial incentive(s), including but not limited to upfront payments, incentive structures, target performance levels, and reporting requirements, in mutual agreement with the provider to align with patient panel needs and practice priorities.

C. Carriers may include other care delivery expectations, in addition to the aligned core competencies, at the mutual agreement of the carrier and the provider. Additional specified care delivery expectations may not be redundant with the aligned core competencies in Appendix B and should be based on a provider's patient panel needs and practice priorities.

D. The aligned core competencies will be reviewed annually by the Commissioner.

1. The Division will seek input on proposed modifications to the aligned core competencies through a stakeholder process that includes the Primary Care Payment Reform Collaborative, carriers and providers participating in APMs that are not participating in the Primary Care Payment Reform Collaborative, relevant state agencies and programs including the Department of Health Care Policy and Financing, and consumers.

2. The Division will provide notice of stakeholder meetings on the Division website, at least two weeks in advance, and all meetings will be open to the public.

Section 9 Aligned Quality Measure Sets

A. Carriers must include the aligned quality measures for Adult and Pediatric populations set forth in Appendix C in a quality measure set utilized in an APM for primary care services.

1. Provider performance on measures in the aligned measure set must impact payment in a meaningful way, while still allowing for prospective, upfront payments. Carriers may not incorporate any measure that is part of the aligned measure set into a payment arrangement such that performance on the measure lacks meaningful financial implications to the provider.

a. Nothing in this Section 9(A) requires a carrier to include one or more of the measures in the aligned measure set into the terms of a contract with a specific provider or practice or intermediary. The measures in the aligned quality measure set must be included in the set of quality measures that are utilized in an APM, and available for selection by payers and providers, but carriers and providers should mutually determine the appropriate measures that will be included in the terms of a specific contract.

b. Carriers and providers must determine appropriate thresholds for provider or practice's performance, based on practice capacity and experience reporting quality measures.

2. Carriers must follow the measure steward specifications for all measures included in the aligned measure set. Any deviations or exceptions must be mutually agreed upon with the provider.

3. Carriers must include the Adult measure set, the Pediatric measure set, or both in the overarching quality measure set utilized in an APM for primary care services based on the age composition of the practice's full practice panel.

a. For practices with a majority (greater than 80%) of adults in their practice panel, carriers must include the aligned Adult measure set.

b For practices with a majority of pediatric patients (greater than 80%) in their practice panel, carriers must include the aligned Pediatric measure set.

c. For practices with a pediatric population of 20%-80% of their practice panel, carriers must include both the Adult and Pediatric measure sets.

B. Carriers may include measures in addition to the aligned quality measure set at the mutual agreement of the carrier and the provider. Additional measures should consider a provider's

patient panel needs, practice priorities, other state and federal requirements, and feasibility of reporting.

C. A carrier may petition the Commissioner to modify or waive one or more of the requirements of Section 9(A). Any request to waive or modify one or more of the requirements must include a clear rationale supporting the request and must demonstrate how the waiver will advance the quality, accessibility, and/or affordability of healthcare services.

D. The aligned measure set will be reviewed annually by the Commissioner.

1. The Division will seek input on proposed modifications to the aligned quality measure set through a stakeholder process that includes the Primary Care Payment Reform Collaborative, carriers and providers participating in APMs that are not participating in the Primary Care Payment Reform Collaborative, relevant state agencies and programs including the Department of Health Care Policy and Financing, and consumers.

2. The Division will provide notice of stakeholder meetings on the Division website, at least two weeks in advance, and all meetings will be open to the public.

Section 10 Reporting Requirements

A. Carriers must annually report on their use of the aligned APM parameters for primary care services as part of the APM Implementation Plan required by Colorado Insurance Regulation 4-2-72. Annual reporting must include:

1. An attestation that the carrier and/or their vendor is in compliance with the requirements of Sections 6-9 of this regulation;

2. The carrier's and/or vendor's current or planned approach (if applicable) to incorporate social risk into their risk adjustment methodology(ies), including but not limited to social factors such as housing instability, behavioral health issues, disability, and neighborhood-level stressors. This description should include a statement regarding how health equity and patients with health-related social needs, and/or severe or complex health needs are or will be considered in the design of the risk adjustment methodology and the APM;

3. The carrier's efforts to educate members about patient attribution and/or the importance of selecting a primary care provider;

4. A complete list of any additional care delivery expectations, outside of the core competencies in Appendix B, included in the carrier's APMs for primary care services; and

5. A complete list of the additional measures outside of the quality measures in Appendix C included in the carrier's APMs for primary care services, and a brief description of any deviations or exceptions to the aligned measure set in accordance with Section 9.A.2 of this regulation.

B. Carriers may submit a "Confidentiality Index" for any information submitted per the requirements of this subsection that they consider to be confidential pursuant to § 24-72-204, C.R.S., along with the APM Implementation Plan. The Division will evaluate the reasonableness of any request for confidentiality and provide notice to the carrier if the request for confidentiality is rejected.

Section 11 Severability

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

Section 12 Incorporated Materials

Measure steward specifications shall mean the measure specifications located in the Partnership for Quality Measurement's Submission Tool and Repository Measure Database as published on the effective date of this regulation and does not include later amendments to or revisions to the database. A copy of the measure specifications for the quality measures included in the Aligned Quality Measure Set, as of the effective date of this regulation, may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of the measure specifications may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at https://p4qm.org/measures.

Section 13 Enforcement

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

Section 14 Effective Date

This regulation shall be effective January 30, 2024.

Section 15 History

New regulation effective January 30, 2024.

Appendix A: Primary Care Provider Taxonomies

1. Family medicine physicians in an outpatient setting when practicing general primary care;

2. General pediatric physicians and adolescent medicine physicians in an outpatient setting when practicing general primary care;

3. Geriatric medicine physicians in an outpatient setting when practicing general primary care;

4. Internal medicine physicians in an outpatient setting when practicing general primary care (excludes internists who specialize in areas such as cardiology, oncology, and other common internal medicine specialties beyond the scope of general primary care);

5. OB-GYN physicians in an outpatient setting when practicing general primary care;

6. Providers such as nurse practitioners and physicians' assistants in an outpatient setting when practicing general primary care; and

7. Behavioral health providers, including psychiatrists, providing mental health and substance use disorder services when integrated into a primary care setting.

Appendix B: Aligned Core Competencies for Primary Care

The core competencies listed in the following table outline key capacities or skills that are needed for primary care providers to provide high quality, person-centered, whole-person care. Each row represents a “domain” or category of care delivery Each domain is further delineated into three (3) levels or tracks, with Track 1 reflecting competencies for practices that are starting the care transformation process and Track 3 reflecting competencies of a more advanced practice.

The aligned core competencies establish a common set of expectations around the type of care that primary care providers participating in APMs should have in order to deliver high-quality, person-centered, whole-person care. Carriers must support providers’ achievement of the competencies through financial incentives. Carriers may determine the level and type of financial incentive(s), including but not limited to upfront payments, incentive structures, target performance levels, and reporting requirements, in mutual agreement with the provider to align with patient panel needs and practice priorities. Carriers and providers may determine additional competencies and activities that are appropriate within each domain, and at each level, and the process for evaluating performance and progress.

Care Delivery Domain	Track 1	Track 2	Track 3
Leadership	● Practice leadership sets practice-wide expectations for evaluating and improving clinical and operational processes and outcomes, and for incorporating health equity principles into operational processes and quality improvement initiatives. ● Practice leadership allocates	● Practice leadership develops and implements a process to review and evaluate clinic level quality improvement initiatives, including the creation of an improvement plan for each area of opportunity.	● Practice leadership incorporates health equity principles into quality improvement initiatives.

	appropriate resources (including time for appropriate quality improvement team membership) to ensure continuous quality improvement.		
Data Driven Quality Improvement	● Practice sets quality metric goals using benchmarks and reviews performance on internally validated clinical quality measures at least quarterly. ● Practice develops a quality improvement team that meets monthly.	● Practice uses an organized quality improvement approach to meet quality measure goals/benchmarks for at least one clinical quality measure. ● Practice discusses and develops a process to routinely gather and update patient demographics information, including race, ethnicity, language and communication needs, sexual orientation, and gender identity.	● Practice collects and reports on measures specific to behavioral health efforts and tracks performance relative to targets. This includes tracking reach and outcomes with validated measures (e.g., PHQ-9, GAD-7, Edinburgh maternal depression scale). In practices caring for children, this includes developmental screening. ● Practice uses an organized quality improvement measure

			goal/benchmark for at least three clinical quality measures. ● Practice implements a process to routinely gather and update patient demographics information, including race, ethnicity, language and communication needs, sexual orientation, and gender identity.
Empanelment	● Practice designs and implements a process for validating primary care provider and/or care team assignments with patients.	● Practice has assessed patient panels and assigned primary care providers and/or care teams to 60% of the patient population.	● Practice has assessed patient panel and assigned primary care providers and/or care teams to 85% of the patient population.
Team Based Care	● Practice develops and reviews written roles and responsibilities for team-based care to ensure accountability for assigned tasks. ● Practice identifies and implements a team-based care strategy to improve communication (team	● Practice incorporates behavioral health training into onboarding and ongoing professional development efforts, for primary care providers and all clinic staff.	● Practice team includes a family navigator, health coach, care coordinator, community health worker, or other team member with the responsibility of providing culturally relevant support, coordination, and service to the person and family. If these roles cannot be filled within the

	huddle, debriefs, collaborative care planning).		practice, the practice works with community-based organizations to make referrals for appropriate care.
Patient and Family Engagement	● Practice utilizes methods to obtain patient feedback on experience of care, such as through a patient experience survey or patient and family advisory council and uses data to assess their delivery of primary care services as well as patient satisfaction with care. ● Practice educates patients and family members/caregivers on availability of behavioral health services, including mental health and substance use disorder services within the practice or through referral.	● Practice reviews data from methods to obtain patient feedback on experience of care at least quarterly to identify areas for focus as part of their quality improvement process. ● Practice adopts at least one evidence-based decision aid or self-management support tool for a condition appropriate for their patient population.	● Practice assesses the inclusivity of the practice through methods established to obtain patient feedback on experience of care. ● Practice acts on patient feedback to carry out identified quality improvement processes.

Population Management	● Practice implements a risk stratification process for all empaneled patients, addressing medical need, behavioral diagnoses, and health-related social needs: Step 1. Use an algorithm based on defined diagnoses, claims, or other electronic data allowing population-level stratification; and Step 2. Add the care team's perception of risk to adjust the risk stratification of patients, as needed. ● Practice identifies strategies to identify care gaps (e.g., EHR prompts, patient registry, data aggregation tool). ● Practice identifies staff and develops workflows to provide care management for patients with chronic conditions and/or patients determined to be higher risk and for timely post-	● Practice implements workflow for improving proactive care gap management and tracks specific outcomes. ● Practice identifies patients who need or would benefit from behavioral health services, including through universal screening for at least one priority mental health condition, one priority substance use condition, and one lifestyle behavior.	● Practice ensures positive behavioral health screens are offered treatment within the practice or referred to appropriate services outside of the practice. ● Practice assesses the impact of care gap management on outcomes and need for improvement in the process. ● Practice reassesses behavioral health symptoms, side effects, complications, and treatment adherence at regular intervals and utilizes evidence-based stepped care guidelines in adjusting treatment plans if patients are not improving as expected. Practice considers individual patient barriers to treatment.

	ED and hospitalization follow-up.		
Continuity of Care	● Practice measures and reviews continuity of care for empaneled patients by primary care providers and/or care teams.	● Practice implements one strategy that improves continuity for practitioners and care team(s).	● Practice re-assesses continuity of care and determines if further intervention is needed to improve continuity while balancing the need for prompt access to care. If further interventions are needed, the practice implements at least one intervention.
Access	● Practice assesses access to primary care services for its patients through availability of appointments and through patient experience surveys.	● Practice adopts extended hours, same day appointments, patient portal, or other methods to improve access and then reassesses for any problem areas.	● Practice has both same day (or next day) access and extended hours in place.

		● Practice ensures physical spaces and services are accessible and responsive to patients' and families' disability status, sexual orientation, and gender identity, racial and ethnic backgrounds, cultural health beliefs and practices, preferred languages, and health literacy.	
Comprehensiveness and Care Coordination	● Practice assesses the services it provides to patients and identifies key services that could be added to improve comprehensiveness of care, including behavioral health. ● Practice provides crisis resources and referrals as indicated. ● Practice develops a vision for behavioral health integration and chooses a strategy (e.g., full integration, virtual integration, collaborative care model) to improve comprehensiveness of behavioral health services.	● The primary care provider diagnoses and offers medication management for mild to moderate behavioral health conditions and links patients to therapy and/or specialty mental health settings as indicated. ● Practice has referral pathways for patients with behavioral health conditions including potential referral sources for populations with specific needs (e.g., LGBTQIA+ friendly). ● Practice develops workflows for referrals to social service providers.	● Practice has implemented a behavioral health integration strategy to improve comprehensiveness of behavioral health services. ● Practice ensures that primary behavioral health referral sources have appointment availability and tracks completion of first appointment.

Value Based Contracting	● Practice considers mechanisms to maximize benefit of participation in alternative and performance payment arrangements.	● Practice evaluates impact of value-based payment agreements on financial stability of practice, quality of care provided, and/or clinician and staff satisfaction.	● Practice demonstrates improvement on at least one cost or utilization metric.

Appendix C: Aligned Quality Measure Sets

Adult Measure Set

Domain	Measure	Consensus-Based Entity (CBE) ID/Steward
Preventive Care	Breast Cancer Screening	2372 / NCQA
Preventive Care	Cervical Cancer Screening	0032 / NCQA
Preventive Care	Colorectal Cancer Screening	0034 / NCQA

Preventive Care	Screening for Depression and Follow-Up	0418 / CMS
Chronic Conditions	Comprehensive Diabetes Care: HbA1c Poor Control (>9%)	0059 / NCQA
Chronic Conditions	Controlling High Blood Pressure	0018 / NCQA
Patient Experience	Consumer Assessment of Healthcare Providers and Systems (CAHPS) Health Plan Adult Survey -OR- Person-Centered Primary Care Measure (PRO-PM)	0006 / AHRQ 3568 / American Board of Family Medicine

Pediatric Measure Set

Domain	Measure	Consensus-Based Entity (CBE) ID/Steward
Preventive Care	Child and Adolescent Well-Care Visits	1516 / NCQA
Preventive Care	Developmental Screening in the First Three Years of Life	1448 / OHSU
Preventive Care	Well-Child Visits in the First 30 Months of Life	1392 / NCQA

Preventive Care	Screening for Depression and Follow-Up	0418 / CMS
Preventive Care	Childhood Immunization Status - Combo 10	0038 / NCQA
Preventive Care	Immunizations for Adolescents - Combo 2	1407 / NCQA
Patient Experience	Consumer Assessment of Healthcare Providers and Systems (CAHPS) Health Plan Child Survey -OR- Person-Centered Primary Care Measure PRO-PM	0006 / AHRQ 3568 / American Board of Family Medicine

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: 2023-00696

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

Division of Insurance

on 11/30/2023

3 CCR 702-4 Series 4-2

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

The above-referenced rules were submitted to this office on 12/05/2023 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.

December 14, 2023 08:51:51

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 Chiropractic Examiners

CCR number

3 CCR 707-1

Rule title

3 CCR 707-1 CHIROPRACTIC EXAMINERS RULES AND REGULATIONS 1 - eff 01/14/2024

Effective date

01/14/2024

DEPARTMENT OF REGULATORY AGENCIES

Board of Chiropractic Examiners

CHIROPRACTIC EXAMINERS RULES AND REGULATIONS

3 CCR 707-1

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

…

…

Editor's Notes

History

Rules 3, 7, 26 eff. 05/30/2007.
Rules 10, 22 eff. 07/30/2007.
Rules 8-15 eff. 01/30/2008.
Rules 6, 7, 10, 11, 13, 17, 27 eff. 07/30/2009.
Rules 1(D); 2; 4; 8(C); 11; 12; 17(A) eff. 12/01/ 2009. Rules 5; 9 repealed eff. 12/01/2009.
Rules 8, 19 eff. 03/17/2010.
Rule 27 repealed eff. 03/17/2011.
Rules 8, 28 eff. 09/30/2012. Rule 26 repealed eff. 09/30/2012.
Rule 30 emer. rule eff. 12/31/2012; expired 04/30/2013.
Rules 6-7, 29 eff. 01/14/2013.
Rule 7 C emer. rule eff. 01/24/2013.
Rule 7 C eff. 05/15/2013.
Rules 1, 3, 4, 6-8, 10, 11, 17, 20, 22, 24, 25, 30 eff. 05/25/2019.
Rules 12, 13, 15, 19 E eff. 07/15/2019.
Rules 1.6 A, 1.7, 1.11 eff. 11/14/2019.
Rule 1.31 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.32 emer. rule eff. 05/11/2020; expired 09/08/2020.
Rules 1.8 A, 1.8 G, 1.8 K, 1.33, 1.34 emer. rules eff. 08/25/2020.
Rule 1.31 emer. rule eff. 08/30/2020; expired 12/28/2020.
Rule 1.32 emer. rule eff. 09/09/2020.
Rules 1.8 A, 1.8 G, 1.8 K, 1.33, 1.34, 1.35, Appendix B eff. 11/30/2020.
Rule 1.32 emer. rule eff. 12/28/2020.
Rule 1.36 emer. rule eff. 01/11/2021.
Rule 1.31 emer. rule eff. 01/20/2021.
Rules 1.31, 1.32 emer. rules eff. 04/27/2021.
Rule 1.36 emer. rule eff. 05/11/2021.
Rules 1.35 E-F eff. 05/15/2021.
Rules 1.31, 1.36 emer. rules eff. 07/12/2021.
Rules 1.31, 1.36 emer. rules eff. 11/02/2021.
Rules 1.31, 1.36 emer. rules eff. 03/02/2022.
Rules 1.31, 1.36 emer. rules eff. 06/28/2022.
Rules 1.38, 1.39 emer. rules eff. 09/22/2022.
Rules 1.31, 1.36 emer. rules eff. 10/26/2022.
Rules 1.31, 1.36 emer. rules eff. 11/11/2022.
Rules 1.37-1.39, Appendix B eff. 11/14/2022.

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: 2023-00689

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

Division of Professions and Occupations - Board of Chiropractic Examiners

on 11/16/2023

3 CCR 707-1

CHIROPRACTIC EXAMINERS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/16/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 04, 2023 10:57:02

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 Board of Optometry

CCR number

4 CCR 728-1

Rule title

4 CCR 728-1 STATE BOARD OF OPTOMETRY RULES AND REGULATIONS 1 - eff 01/14/2024

Effective date

01/14/2024

DEPARTMENT OF REGULATORY AGENCIES

State Board of Optometry

STATE BOARD OF OPTOMETRY RULES AND REGULATIONS

4 CCR 728-1

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

…

…

1.29 RULES REGARDING THE USE OF BENZODIAZEPINES

…

Editor's Notes

History

Rules 14, 15 eff. 08/01/2009.
Rules 9, 14, 15 eff. 01/01/2010.
Rule 15 repealed eff. 09/30/2010.
Rules 9, 14 eff. 01/01/2011.
Rule 11 eff. 07/01/2011.
Rules 9.01, 17-19 eff. 12/30/2011.
Rule 16 eff. 03/01/2012.
Entire rule eff. 07/15/2014.
Rules 1.8 A.5, 1.8 B.5, 1.22 eff. 12/15/2019.
Rule 1.27 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.28 emer. rule eff. 05/11/2020; expired 09/08/2020.
Entire rule eff. 07/15/2020. Rules 1.9, 1.14, 1.17 repealed eff. 07/15/2020.
Rule 1.27 emer. rule eff. 08/30/2020.
Rule 1.28 emer. rule eff. 09/09/2020.
Rules 1.27, 1.28 emer. rules eff. 12/28/2020.
Rule 1.26, Appendix A eff. 12/30/2020.
Rule 1.29 emer. rule eff. 01/11/2021.
Rules 1.27, 1.28 emer. rules eff. 04/27/2021.
Rule 1.29 emer. rule eff. 05/11/2021.
Rules 1.27, 1.28 emer. rules eff. 07/12/2021.
Rules 1.26, Appendix A eff. 07/15/2021.
Rules 1.27, 1.28 emer. rules eff. 11/02/2021.

Rule 1.29 emer. rule eff 11/18/2021.

Rule 1.29 eff. 01/14/2022.

Rules 1.27, 1.28 emer. rules eff. 03/02/2022.

Rules 1.27, 1.28 emer. rules eff. 06/28/2022.

Rules 1.30, 1.31 emer. rules eff. 10/05/2022.

Rules 1.27, 1.28 emer. rules eff. 10/26/2022.

Rules 1.27, 1.28 emer. rules eff. 11/11/2022.

Rules 1.31, 1.32 emer. rules eff. 01/09/2023; expired 05/09/2023.

Rules 1.10-1.30, 1.33, Appendix B eff. 01/14/2023.

Annotations

Rules 1.30 B. and 1.30 C. were to be expired by Senate Bill 23-102. However, these rules were not adopted on or after November 1, 2021 and before November 1, 2022 pursuant to section 24-4-103(8)(c), C.R.S., and therefore were not removed.

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: 2023-00690

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

Division of Professions and Occupations - State Board of Optometry

on 11/16/2023

4 CCR 728-1

STATE BOARD OF OPTOMETRY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/16/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 01, 2023 10:47:04

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 Architects, Engineers, and Land Surveyors

CCR number

4 CCR 730-1

Rule title

4 CCR 730-1 ARCHITECTS, PROFESSIONAL ENGINEERS, AND PROFESSIONAL LAND SURVEYORS RULES AND REGULATIONS 1 - eff 01/30/2024

Effective date

01/30/2024

DEPARTMENT OF REGULATORY AGENCIES

State Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors

ARCHITECTS, PROFESSIONAL ENGINEERS, AND PROFESSIONAL LAND SURVEYORS RULES AND REGULATIONS

4 CCR 730-1

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

…

Editor's Notes

History

Entire rule eff. 04/01/2008.

Rules 3.1.2, 4.9 eff. 12/31/2008.

Entire rule eff. 01/01/2010.

Entire rule eff. 01/01/2011.

Rules 4.8.2.2.1, 4.8.3 eff. 06/01/2011.

Rules 2.1, 1.2.2, 2.2, 3.1.9, 3.2.1.1, 4.1.1.3, 4.1.1.8, 4.3.3, 4.3.5, 4.7.2.2, 4.7.2.3, 4.9.1, 4.9.2, 4.9.3.1.2, 5.2.3, 6.2.3, 7.1.4 eff. 01/01/2012.

Rules 2.1-2.2, 3.1.10, 4.1.1.3, 4.1.1.6, 4.1.1.7-4.1.1.10, 4.3.4-4.3.5, 4.4.1, 4.5, 4.5.2-4.5.4, 4.6.1.10, 4.6.2.5, 4.6.7, 4.7.1.2, 4.7.1.4, 4.7.2.1, 4.8.2.1-4.8.2.2, 4.8.6, 4.9.1-4.9.1.2.1.1, 4.9.3.1.2.5, 4.9.3.1.2.15-4.9.3.1.2.16, 4.10.1, 4.11, 5.2.2, 6.5.1, 6.5.1.1, 6.5.4-6.5.4.2, 7.1.1, 7.1.5, 7.2 eff. 09/01/2015. Rules 4.4.1.1, 4.6.1.3, 4.6.2.3, 4.8.4, 4.10.2, 6.6.2(c), 7.1.7, 7.3 repealed eff. 09/01/2015.

Rule 4.9.1 eff 03/17/2017. Rules 4.9.1.1.1.1, 4.9.1.2.1.1 repealed eff 03/17/2017.

Rules 4.6.5, 4.8.1 emer. rules eff. 05/15/2019.

Rules 4.6.5, 4.8.1 emer. rules eff. 06/14/2019.

Rules 4.6.5, 4.8.1 eff. 09/14/2019.

Rules 1.2 A, 1.2 B.17.b, 1.3 A.3, 1.3 A.10.a, 1.3 C.3.a, 1.3 D.6, 1.3 E.2, 1.4 A, 1.4 F.1.d, 1.4 F.2.e, 1.4 G.2.a, 1.4 H.2.c, 1.4 I.1.a.(1), 1.4 I.1.b.(1), 1.4 I.3.a.(2)(d), 1.4 I.3.e, 1.4 I.3.(g), 1.4 I.3.(k), 1.4 I.3.(l)(iv), 1.4 I.3.(n)(ii), 1.4 I.3.(q)(iii), 1.4 K.1.d, 1.5 A, 1.6 A.2, 1.6 A.3, 1.6 A.7, 1.6 B, 1.6 D.3, 1.6 E.3, 1.6 L, 1.7 B eff. 08/14/2020.

Rules 1.7 A.2-3 eff. 08/30/2020.

Rules 1.4 A.1.g, 1.4 I.1.a.(1), 1.4 I.1.b, 1.4 I.2.a-b, 1.4 I.3.a.(2)(a)(c)(e)(g)(h)(i), 1.4 I.3.a.(2)(k)(ii)(vi), 1.4 I.3.a.(2)(l)(ix), 1.4 I.3.a.(2)(n), 1.4 I.3.a.(2)(r)(ii), 1.4 K.1 eff. 10/30/2021. Rules 1.4 I.3.a.(2)(j)(v), 1.4 I.3.a.(2)(l)(iv) repealed eff. 10/30/2021.

Rule 1.9 emer. rule eff. 10/14/2022.

Rule 1.9 eff. 11/30/2022.

Annotations

Rules 1.9 B. and 1.9 C. (adopted 10/14/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

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: 2023-00726

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

Division of Professions and Occupations - Board of Architects, Engineers, and Land Surveyors

on 12/08/2023

4 CCR 730-1

ARCHITECTS, PROFESSIONAL ENGINEERS, AND PROFESSIONAL LAND SURVEYORS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 12/08/2023 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.

December 14, 2023 09:05:53

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission

CCR number

5 CCR 1002-11

Rule title

5 CCR 1002-11 REGULATION NO. 11 - COLORADO PRIMARY DRINKING WATER REGULATIONS 1 - eff 01/14/2024

Effective date

01/14/2024

Water Quality Control Commission

REGULATION NO. 11 - COLORADO PRIMARY DRINKING WATER REGULATIONS

5 CCR 1002-11

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

11.1 AUTHORITY AND PURPOSE

11.1(1) Authority

The Water Quality Control Commission has promulgated the *Colorado Primary Drinking Water Regulations* pursuant to sections 24-4-104, 24-4-105, 25-1.5-101, 25-1.5 Part 2, 25-1-109, 25-1-114, 25-1-114.1, and 25-8-202, Colorado Revised Statutes.

******

11.2 GENERAL REQUIREMENTS

******

11.2(6) Materials Incorporated by Reference

(a) Date of Incorporation

(i) Throughout these regulations, requirements promulgated by the U.S. Environmental Protection Agency have been adopted and incorporated by reference. The federal references cited herein include only those versions that were in effect as of November 13, 2023, and not later amendments to the incorporated material.

(ii) All other materials incorporated by reference in the Colorado Primary Drinking Water Regulations include only those versions cited and not later amendments to incorporated material.

****

11.63 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: November 13, 2023, rulemaking; Final Action November 13, 2023; Effective Date January 14, 2024

The Water Quality Control Commission revised the following section in this rulemaking hearing: Section 11.2(6) - Materials Incorporated by Reference. The provisions of the Colorado Revised Statutes (CRS), sections 25-1.5-202, and 25-8-202(1), CRS, provide specific statutory authority for adoption of these regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4), CRS, the following statement of basis and purpose.

BASIS AND PURPOSE

The Commission recently adopted the Lead and Copper Rule Revisions as required to retain Colorado's primacy under the Safe Drinking Water Act. Those revisions incorporate by reference a number of federal regulations. Pursuant to 24-4-103(12.5), CRS, incorporations by reference must identify the version of regulations adopted by

including a date. This rulemaking amends the incorporation by reference date in Regulation 11.2(6) from April 8, 2018 to November 13, 2023 in order to include recent changes to the federal regulations relevant to the Lead and Copper Rule Revisions.

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: 2023-00683

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

Water Quality Control Commission

on 11/13/2023

5 CCR 1002-11

REGULATION NO. 11 - COLORADO PRIMARY DRINKING WATER REGULATIONS

The above-referenced rules were submitted to this office on 11/14/2023 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 30, 2023 15:03:44

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission

CCR number

5 CCR 1002-86

Rule title

5 CCR 1002-86 REGULATION NO. 86 - GRAYWATER CONTROL REGULATION 1 - eff 01/14/2024

Effective date

01/14/2024

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

GRAYWATER CONTROL REGULATION

REGULATION No. 86

5 CCR 1002-86

ADOPTED: May 11, 2015
EFFECTIVE: June 30, 2015
AMENDED: November 9, 2015
EFFECTIVE: December 30, 2015
AMENDED: November 13, 2023
EFFECTIVE: January 14, 2024

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 86 - GRAYWATER CONTROL REGULATION

5 CCR 1002-86

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

86.1 Authority

This regulation is promulgated pursuant to the Colorado Water Quality Control Act (CWQCA) sections 25-8-101 through 25-8-1008, C.R.S. In particular, it is promulgated under section 25-8-205(1)(g), C.R.S.

86.2 Purpose and Scope

A. Purpose

Graywater is expected to carry human pathogens with various risk levels and pathways that have the potential to be dangerous to public health. Therefore, the purpose of this regulation, as authorized by section 25-8-205(1)(g), is to describe requirements, prohibitions, and standards for the use of graywater for nondrinking water purposes, to encourage the use of graywater, and to protect public health and water quality.

B. Scope

This regulation establishes the allowed users and allowed uses of graywater within the state of Colorado; establishes the minimum state-wide standards for the location, design, construction, operation, installation, modification of graywater treatment works; and establishes the minimum ordinance or resolution requirements for a city, city and county, or county that chooses to authorize graywater use within its jurisdiction.

86.3 Severability

The provisions of this regulation are severable, and if any provisions or the application of the provisions to any circumstances is held invalid, the application of such provision to other circumstances, and the remainder of this regulation shall not be affected thereby.

86.4 Voluntary Local Graywater Control Programs

Each local city, city and county, or county has the discretion to decide whether to adopt any of the graywater uses along with the associated minimum design criteria and control measures set forth in this regulation.

86.5 Materials Incorporated by Reference

The materials incorporated by reference cited herein include only those versions that were in effect as of November 13, 2023 and not later amendments to the incorporated material.

All materials referenced in this regulation may be examined online, where available, or at the Water Quality Control Division, at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

86.6 Applicability

A. All graywater uses and graywater treatment works must comply with the minimum requirements of this regulation as set forth in a local graywater control program.

1. Graywater treatment works may only be installed and operated within the jurisdiction of a city, city and county, or county with a local graywater control program.

2. Graywater treatment works installed prior to the effective date of this regulation are only allowed under a local graywater control program and must meet the local requirements adopted pursuant to these regulations. Graywater treatment works that reuse graywater for outdoor subsurface irrigation which were approved by a local public health agency prior to May 15, 2013 and pursuant to 5 CCR 1002-43, section 43.4(J) or pursuant to 5 CCR 1003-6, section IV.J, and which are in compliance with all requirements imposed by the local public health agency, are deemed to be in compliance with the requirements of this regulation unless or until any modification to the graywater treatment works is made.

3. Approved graywater treatment works installed prior to the effective date of this regulation are deemed to be in compliance with the requirements of this regulation unless or until any modification to the graywater treatment works is made; or the local agency identifies an environmental or public health risk with the existing treatment works' historically approved design and revokes or rescinds approval. Upon revoking or rescinding approval, the local agency has up to 365 days to upgrade any existing graywater treatment works to meet the requirements of the local graywater control program's ordinance or resolution.

4. Graywater treatment works installed under a local graywater control program which is later revoked or rescinded must within 365 days:

a. Be physically removed or permanently disconnected; or

b. Be regulated under a limited graywater control program for existing graywater treatment works. In this case, the local city, city and county, or county must continue the limited graywater control program for the existing graywater treatment works only; or

c. Be regulated under another jurisdiction's local graywater control program which assumes authority over the existing graywater treatment works. The existing graywater treatment works will need to comply with the new city, city and county, or county's local graywater control program, including any required graywater treatment works modifications.

5. In the event that a property with a compliant graywater treatment works is annexed or de-annexed into a jurisdiction with differing graywater requirements, the property owner must within 365 days:

a. Ensure the graywater treatment works is physically removed or permanently disconnected; or

b. Ensure the graywater treatment works is incorporated into another city, city and county, or county's local graywater control program. This includes conforming to

the minimum requirements of the new local graywater control program and may include improving or modifying the graywater treatment works.

6. A local agency that is subject to one of the control regulations 5 CCR 1002-71 through 1002-75 must notify the control basin authority of its plan to adopt a local graywater control program prior to adopting an ordinance or resolution. The graywater control program must require that the use of graywater be in compliance with any applicable requirements in 5 CCR 1002-71 through 1002-75.

B. Graywater use is only allowed under a local graywater control program and must meet the local requirements adopted pursuant to these regulations. Unauthorized graywater use and discharges are prohibited.

C. This regulation does not apply to: discharges pursuant to a Colorado Discharge Permit System (CDPS) or National Pollution Discharge Elimination System (NPDES) permit, wastewater that has been treated and released to state waters prior to subsequent use, wastewater that has been treated and used at a domestic wastewater treatment works for landscape irrigation or process uses, on-site wastewater treatment works authorized under Regulation No. 43, reclaimed wastewater authorized under Regulation No. 84, water used in an industrial process that is internally recycled, and rainwater harvesting.

D. Local agencies have 365 days from the effective date of this regulation to update their local graywater ordinance or resolution to be at least as stringent as this regulation.

86.7 Enforcement and Division Oversight

A. The local city, city and county, or county with a local graywater control program has exclusive enforcement authority regarding compliance with the ordinance or resolution and, if applicable, rule.

B. The Colorado Water Quality Control Division oversees state-wide implementation of this regulation. As part of the state-wide implementation, a local city, city and county, or county that chooses to adopt a local graywater control program must notify the Water Quality Control Division at least60 days prior to scheduling adoption of an ordinance or resolution. A copy of the ordinance or resolution and, if applicable, rule must be submitted to: Water Quality Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. All local graywater control program ordinances or resolutions must be transmitted to the division no later than five (5) business days after final adoption.

C. Any portions of the local ordinance or resolution determined by the division not to be in compliance with this regulation must be revised by the local city, city and county, or county within 180 days of written notification by the division.

86.8 Definitions

(1) “Agronomic rate” means the rate of application of nutrients to plants that is necessary to satisfy the nutritional requirements of the plants.

(2) “Agricultural irrigation” means irrigation of crops produced for direct human consumption, crops where lactating dairy animals forage, and trees that produce nuts or fruit intended for human consumption. This definition includes household gardens and fruit trees.

(3) "Backflow Contamination Event" means backflow into a public water system or potable water system from an uncontrolled cross connection such that the water quality no longer meets the Colorado Primary Drinking Water Regulations or presents an immediate health and/or safety risk to the public.

(4) "Backflow Prevention Assembly" means any mechanical assembly installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the mechanical assembly is appropriate for the identified contaminant at the cross connection and is an in-line field-testable assembly.

(5) "Backflow Prevention Method" means any method and/or non-testable device installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the method or non-testable device is appropriate for the identified contaminant at the cross connection.

(6) "Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year. This 1-percent annual chance flood is also referred to as the 100-year flood.

(7) "Base Flood Elevation (BFE)" - The elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

(8) "Closed sewerage system" means either a permitted domestic wastewater treatment works, which includes a permitted and properly functioning OWTS with a design capacity more than 2,000 gallons per day (gpd), or a properly functioning and approved or permitted OWTS with a design capacity of 2,000 gpd or less.

(9) "Commission" means the Water Quality Control Commission created by section 25-8-201, C.R.S.

(10) "Component" means a subpart of a graywater treatment works which may include multiple devices.

(11) "Cross-Connection" means any connection that could allow any water, fluid, or gas such that the water quality could present an unacceptable health and/or safety risk to the public, to flow from any pipe, plumbing fixture, or a customer's water system into a public water system's distribution system or any other part of the public water system through backflow.

(12) "Design" means the process of selecting and documenting in writing the size, calculations, site specific data, location, equipment specification and configuration of treatment components that match site characteristics and facility use.

(13) "Design flow" means the estimated volume of graywater per unit of time for which a component or graywater treatment works is designed.

(14) "Dispersed subsurface irrigation" means a subsurface irrigation system including piping, pumps, and emitters installed throughout an irrigation area.

(15) "Division" means the Water Quality Control Division of the Colorado Department of Public Health and Environment.

(16) “ENERGY STAR (ENERGY STAR®)” means the Environmental Protection Agency’s designation for energy efficient appliance as authorized by 42 U.S.C. Section 6294a. (Note: Determination of whether the appliance is designated, has an IWF and to determine the IWF, visit the Department of Energy’s ENERGY STAR Certified Residential Clothes Washers website: https://www.energystar.gov/productfinder/product/certified-clothes-washers/)

(17) “Facility” means any building, structure, or installation, or any combination thereof that uses graywater subject to a local graywater control program, is located on one or more contiguous or adjacent properties, and is owned or operated by the same person or legal entity. Facility is synonymous with the term operation.

(18) “Floodplain (100-year)” means an area adjacent to a river or other watercourse which is subject to flooding as the result of the occurrence of a one hundred (100) year flood, and is so adverse to past, current or foreseeable construction or land use as to constitute a significant hazard to public or environmental health and safety or to property or is designated by the Federal Emergency Management Agency (FEMA) or National Flood Insurance Program (NFIP). In the absence of FEMA/NFIP maps, a professional engineer shall certify the floodplain elevations.

(19) “Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot or as designated by the Federal Emergency Management Agency or National Flood Insurance Program. In the absence of FEMA/NFIP maps, a professional engineer shall certify the floodway elevation and location.

(20) “Graywater" means that portion of wastewater that, before being treated or combined with other wastewater, is collected from fixtures within residential, commercial, or industrial buildings or institutional facilities for the purpose of being put to beneficial uses. Sources of graywater are limited to discharges from bathroom and laundry room sinks, bathtubs, showers, and laundry machines. Graywater does not include the wastewater from toilets, urinals, kitchen sinks, dishwashers, or nonlaundry utility sinks.

(21) "Graywater treatment works" means an arrangement of devices and structures used to: (a) collect graywater from within a building or a facility; and (b) treat, neutralize, or stabilize graywater within the same building or facility to the level necessary for its authorized uses.

(22) “Indirect connection” means a waste pipe from a graywater treatment works that does not connect directly with the closed sewerage system, but that discharges into the closed sewerage system though an air break or air gap into a trap, fixture, receptor, or interceptor.

(23) “Integrated Water Factor (IWF)” means a measure of water efficiency in gallons of water consumed per cubic foot of capacity.

(24) “Laundry to Landscape” means a form of graywater treatment works designed to reuse water from a laundry machine for mulch basin subsurface irrigation.

(25) “Legally responsible party”

(1) For a residential property, the legally responsible party is the property owner.

(2) For a corporation, the legally responsible party is a responsible corporate officer, either:

(i) 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

(ii) the manager of operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for approval application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(3) For a partnership or sole proprietorship, the legally responsible party is either a general partner or the proprietor, respectively.

(4) For a municipality, State, Federal, or other public agency, the legally responsible party is a principal executive officer or ranking elected official, either

(i) the chief executive officer of the agency, or

(ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(26) “Limited local graywater control program” is a local graywater control program limited to existing graywater treatment works and which does not accept new graywater treatment works.

(27) “Local agency” means any local city, city or county, county agency including, but not limited to, a department, local public health agency, or district which is delegated the authority to administer all or a portion of the responsibilities of the local graywater control program.

(28) “Local graywater control program” is a local ordinance or resolution and, if applicable, rule, including implementation practices, authorized by a city, city and county or county which is in compliance with the minimum requirements of this regulation.

(29) “Local public health agency” means any county, district, or municipal public health agency and may include a county, district, or municipal board of health.

(30) “Modification” means the alteration or replacement of any component of a graywater treatment works that can affect the quality of the finished water, the rated capacity of a graywater treatment works, the graywater use, alters the treatment process of a graywater treatment works, or compliance with this regulation and the local graywater control program. This definition does not include normal operations and maintenance of a graywater treatment works.

(31) “Mulch” means organic material including but not limited to leaves, prunings, straw, pulled weeds, and wood chips.

(32) “Mulch basin” means a type of subsurface irrigation or treatment field filled with mulch or other approved permeable material of sufficient depth, length, and width to prevent ponding or runoff. A mulch basin may include a basin around a tree, a trough along a row of plants, or other shapes necessary for irrigation.

(33) “On-site wastewater treatment system” or "OWTS" means an absorption system of any size or flow or a system or facility for treating, neutralizing, stabilizing, or dispersing sewage generated in the vicinity, which system is not a part of or connected to a sewage treatment works.

(34) “Percolation test” means a subsurface soil test at the depth of a proposed irrigation area to determine the water absorption capability of the soil, the results of which are normally expressed as the rate at which one inch of water is absorbed. The rate is expressed in minutes per inch.

(35) “Potable water system” means a system for the provision of water to the public for human consumption through pipes or other constructed conveyances, where such system has less than fifteen service connections or regularly serves less than an average of at least 25 individuals daily at least 60 days per year.

(36) “Professional engineer” means an engineer licensed in accordance with section 12-25-1, C.R.S.

(37) “Public nuisance” means the unreasonable, unwarranted and/or unlawful use of property, which causes inconvenience or damage to others, including to an individual or to the general public.

(38) “Public water system” means a system for the provision of water to the public for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. A public water system is either a community water system or a non-community water system. Such term does not include any special irrigation district. Such term includes:

(a) Any collection, treatment, storage, and distribution facilities under control of the supplier of such system and used primarily in connection with such system.

(b) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.

(39) “Single family” means a detached or attached structure, arranged and designed as a single family residential unit intended to be occupied by not more than one family and that has separate water and sewer service connections from other dwelling units.

(40) “Site evaluation” means an analysis of soil and site conditions for a graywater subsurface irrigation or mulch basin area to achieve requirements in Section 86.12(B) – Design criteria for subsurface irrigation systems, including mulch basins.

(41) “Soil horizon” means layers in the soil column differentiated by changes in texture, color, redoximorphic features, bedrock, structure, consistence, and any other characteristic that affects water movement.

(42) “Soil profile test pit” means a trench or other excavation used for access to evaluate the soil horizons for properties influencing effluent movement, bedrock, evidence of seasonal high ground water, and other information to be used in locating and designing a graywater subsurface irrigation or mulch basin area.

(43) “Soil structure” means the naturally occurring combination or arrangement of primary soil particles into secondary units or peds; secondary units are characterized on the basis of shape, size class, and grade (degree of distinctness).

(44) "Suitable soil" means unsaturated soil in which the movement of water, air, and growth of roots is sustained to support healthy plant life and conserve moisture. Soil criteria for graywater subsurface irrigation are further defined in section 86.12.

(45) "Subsurface irrigation" means a discharge of graywater into soil a minimum of two inches (2") and no deeper than twelve inches (12") below the finished grade.

(46) "State waters" means any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

(47) "WaterSense" means the Environmental Protection Agency's designation for water efficient fixtures or an analogous successor program.

Table 8-1 Abbreviations and Acronyms

ANSI	American National Standards Institute
C.R.S.	Colorado Revised Statutes
CDPS	Colorado Discharge Permit System
FEMA	Federal Emergency Management Agency
gpd	gallons per day
IWF	Integrated Water Factor
LA	Landscape Area
LRG	Loading Rate for Graywater
MAC	Maximum Absorption Capacity
mg/L	milligrams per Liter
MPI	Minutes Per Inch
NFIP	National Flood Insurance Program
NSF	NSF International, formally known as National Sanitation Foundation
O&M	Operations and Maintenance
OWTS	On-site Wastewater Treatment System(s)

86.9 Administration

A. Local Coordination

Nothing in this regulation shall be deemed to limit the authority of local cities, cities and counties, or counties, pursuant to section 29-1-203, C.R.S., to enter into intergovernmental agreements with each other pertaining to the coordinated adoption and operation of local graywater control program.

B. Minimum Requirements for a Local Graywater Control Program

1. The local city, city and county, or county that chooses to authorize graywater use within its jurisdiction must adopt an ordinance or resolution which meets the following minimum requirements:

   a. Require compliance with the minimum requirements of this regulation.

   b. Require compliance with all applicable federal, state, and local requirements.

c. Define the legal boundary of the local city, city and county, or county's local graywater control program. If the area in which graywater treatment works are allowed by a local control program is smaller than the maximum legal boundary, then the excluded area must be clearly identified.

d. Identify the local agency, or agencies, that is responsible for oversight and implementation of all graywater regulatory activities including, but not limited to, design review, inspection, enforcement, tracking, and complaints.

e. Identify if a fee(s) will be imposed for graywater activities, and if so, which local agency establishes the fee(s) and where fee(s) information is located.

f. Require a searchable tracking mechanism that is indefinitely maintained by the local agency that must include, at a minimum, the following information:

i. Legal address of each facility with graywater treatment works, allowed graywater uses at each facility, and a graywater treatment works description;

ii. The legally responsible party associated with every graywater treatment works;

iii. Where required, the certified operator associated with every graywater treatment works; and

iv. Any changes to the legally responsible party, certified operator and status of the graywater treatment works must be updated within 60 days.

g. Require the local agency to administer and enforce the provisions of the ordinance or resolution, and where applicable for certain program elements, the rule.

2. The local city, city and county, or county that chooses to authorize graywater use within its jurisdiction must adopt an ordinance, resolution or rule which meets the following minimum requirements:

a. Require a local agency to develop a graywater design criteria document, which includes the following:

i. Requirements that are at least as stringent as the minimum design requirements in this regulation; and

ii. Define a site evaluation protocol for subsurface irrigation systems as defined in section 86.12(B)(1)(i)(i).

b. Identify which graywater use categories as defined in section 86.10 are allowed within the legal boundary of the local graywater control program.

c. Require a local agency to approve or deny the installation of new graywater treatment works or modifications to an existing graywater treatment works, and as part of the review process the local agency(ies) must consider the design documentation associated with the graywater treatment works, which must include the following information:

i. The graywater uses;

ii. Location of the graywater treatment system;

iii. Design flow calculations for the graywater treatment works;

iv. The fixture(s) that are the source(s) of the graywater;

v. The design of the plumbing and irrigation system for non-single family uses (Categories B2, C2 and D2 in section 86.10);

vi. A description of the products or components;

vii. If applicable, any supporting soil analysis information for subsurface irrigation uses;

viii. Contact information for system designer or professional engineer and operator for non-single family graywater treatment works with a design capacity greater than 2,000 gallons per day;

ix. Name and address of the legally responsible party; and

x. Must be signed by the legally responsible party.

d. Require that graywater treatment works be inspected or verified and accepted by the local agency, in a format or means specified by the local agency.

e. Require an operation and maintenance (O&M) manual (section 86.15), including the manufacturer's manual (if any) for all graywater treatment works, and require that the O&M manual meet the following:

i. Remain with the graywater treatment works throughout the life of the system;

ii. Be updated at the time the system is modified; and

iii. Upon change of ownership or occupancy of the property where the graywater treatment works is located, transfer to the new owner or tenant.

f. If reporting to the local city, city and county, county, or local agency is required, identify the reporting requirements, including the required parameters and the required frequency.

C. Discontinuation of local graywater program

A local city, city and county, and county that decides to revoke or rescind an adopted local graywater control program must require that all previously allowed graywater treatment works either:

1. Be physically removed or permanently disconnected; or

2. Be regulated under a limited graywater control program for existing graywater treatment works. In this case, the local city, city and county, or county must continue a limited

graywater control program for the existing graywater treatment works. The limited graywater program must include a graywater control program for the existing graywater treatment works but no new graywater treatment works. At a minimum, the limited graywater control program must include items: 86.9(B)(1)(a), 86.9(B)(1)(b), 86.9(B)(1)(d), 86.9(B)(1)(f), 86.9(B)(1)(g) and 86.9(B)(2)(e). If the limited graywater control program allows modifications to existing treatment works then items 86.9(B)(2)(a), 86.9(B)(2)(b), and 86.9(B)(2)(c) must also be included; or

3. Be regulated under another jurisdiction's local graywater control program which assumes authority over the existing graywater treatment works. The existing graywater treatment works will need to comply with the new city, city and county, or county's local graywater control program, including any required graywater treatment works modifications.

86.10 Graywater Use Categories

General: The graywater use categories allowed are defined below. A single facility may have multiple graywater treatment works and uses as long as all applicable use and design requirements are satisfied.

Table 10-1: Graywater Use Categories and Corresponding Applications and Requirement Locations

Graywater Use Category	Use	Graywater Source(s)	End Use	Flow Projections Location	Design Criteria Location *(86.12(A) applies to all graywater treatment works)*	Signage Requirements for Graywater Treatment Works *(86.13(A) applies to all graywater treatment works)*	Control Measures for Graywater Use Categories *(86.14(B) applies to all Graywater Use Categories)*
A1	Single family subsurface irrigation of landscapes and edible crops	Laundry Machines	Outdoor mulch basins (single family dwelling)	86.11(A)(1)(a)	86.12(B)(1) and (2)	None required	86.14(C)
B1	Single family subsurface irrigation of landscapes and edible crops	All allowed graywater sources	Outdoor subsurface irrigation and mulch basins (single family dwelling)	86.11(A)(1)(a)	86.12(B)(1) and (3)	None required	86.14(C)
B2	Non-single family subsurface irrigation of landscapes	All allowed graywater sources	Outdoor subsurface irrigation and mulch basins (non-single family)	86.11(A)(1)(b)	86.12(B)(1) and (3)	86.13(B)(1)	86.14(C)
C1	Single family indoor toilet and urinal flushing	All allowed graywater sources	Indoor toilet and urinal flushing (single family dwelling)	86.11(A)(1)(a)	86.12(C)(1)	None required	86.14(D)
C2	Non-single family indoor toilet and urinal flushing	All allowed graywater sources	Indoor toilet and urinal flushing (non-single family)	86.11(A)(1)(b)	86.12(C)(2)	86.13(B)(2)	86.14(D)
D1	Single family rural fire protection	All allowed graywater sources	Indoor/outdoor firefighting, storage tank outdoor (single family dwelling)	86.11(A)(1)(a)	86.12(D)(1)	86.13(B)(3)	86.14(E)
D2	Non-single family rural fire protection	All allowed graywater sources	Indoor/outdoor firefighting, storage tank outdoor (non-single family)	86.11(A)(1)(b)	86.12(D)(2)	86.13(B)(3)	86.14(E)

A. Category A1: Laundry to Landscape

Category A1 graywater use must meet the following:

1. Allowed users: Single family.

2. Allowed graywater sources: Graywater collected from laundry machines.

3. Allowed uses: Outdoor, mulch basin irrigation within the confines of the legal property boundary for:

   a. Landscapes, and

   b. Edible crops.

4. Design flow: The design flow for a single family, Laundry to Landscape for subsurface irrigation is limited to 250 gallons per day (gpd) or less.

B. Category B1: Single family, subsurface irrigation

Category B1 graywater use must meet the following:

1. Allowed users: Single family.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Outdoor, subsurface irrigation within the confines of the legal property boundary for:

   a. Landscapes, and

   b. Edible crops.

4. Design flow: The design flow for a single family graywater treatment works is limited to a 400 gallons per day (gpd) or less combined flow for all approved uses.

C. Category B2: Non-single family, subsurface irrigation, 2,000 gallons per day (gpd) or less

Category B2 graywater use must meet the following:

1. Allowed users: Non-single family users.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Outdoor, subsurface irrigation within the confines of the legal property boundary for:

   a. Landscapes.

4. Design flow: The design flow for a non-single family graywater treatment works is limited to 2,000 gallons per day (gpd) or less for outdoor irrigation for the entire facility.

D. Category C1: Single family, indoor toilet and urinal flushing

Category C1 graywater use must meet the following:

1. Allowed users: Single family.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Indoor toilet and urinal flushing and outdoor, subsurface irrigation within the confines of the legal property boundary. Treated graywater shall not be used for bidets.

4. Design flow: The design flow for a single family graywater treatment works is limited to 400 gallons per day (gpd) or less combined flow for all approved uses.

E. Category C2: Non-single family, indoor toilet and urinal flushing

Category C2 graywater use must meet the following:

1. Allowed users: Non-single family users.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Indoor toilet and urinal flushing and outdoor, subsurface irrigation within the confines of the legal property boundary. Treated graywater shall not be used for bidets.

4. Design flow: There is no maximum design flow for a non-single family graywater treatment works for indoor toilet and urinal flushing. The design flow is limited to 2,000 gallons per day (gpd) or less for outdoor irrigation for the entire facility.

F. Category D1: Single family rural fire protection

Category D1 graywater use must meet the following:

1. Allowed users: Single family users in areas that local rules allow homes of certain sizes to have a water storage cistern on the property for fire protection if the local fire district/authority agrees to graywater use for fire protection prior to its adoption and use in a local city, city and county or county.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Outdoor storage in a watertight non-potable cistern and used solely for firefighting within the confines of the legal property boundary.

4. Design flow: The design flow for a single family graywater treatment works is limited to 400 gallons per day (gpd) or less combined flow for all approved uses.

G. Category D2: Non-single family rural fire protection

Category D2 graywater use must meet the following:

1. Allowed users: Non-single family users in areas that local rules allow homes of certain sizes to have a water storage cistern on the properties for fire protection if the local fire district/authority agrees to graywater use for fire protection prior to its adoption and use in a local city, city and county or county.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Outdoor storage in a watertight non-potable cistern and used solely for fire fighting within the confines of the legal property boundary.

4. Design flow: There is no maximum design flow for a non-single family graywater treatment works for storing graywater in an onsite cistern for rural fire protection.

86.11 Graywater Treatment Works – Flow Projections

A. Flow projections for all graywater treatment works

1. Graywater treatment works must be sized appropriately using the following flow projection methods:

a. Single family users: Flow to graywater treatment works must be calculated on the occupancy and the fixtures connected to the graywater treatment works. The calculated graywater flow is the number of occupants multiplied by the estimated graywater flow in terms of gpd/occupant from the fixtures connected to the graywater treatment works. For Laundry to Landscape, flow is calculated based on the number and type of laundry machines connected to the system.

i. The occupancy must be calculated based on a minimum of two (2) occupants for the first bedroom and one (1) occupant for each additional bedroom. In all cases, the maximum occupancy must be based on the maximum potential use of the property and not the current population or use.

ii. The estimated graywater flow from each fixture is based on the design flow of the fixture, or if the fixture's design flow is unknown then the estimated graywater flow per occupant is based on the following gallons per day per occupant (gpd/occupant).

(a) Non-WaterSense fixtures: 25 gpd/occupant for each bathroom and laundry room sink, bathtub and shower.

(b) WaterSense fixtures: 20 gpd/occupant for each bathroom and laundry room sink, bathtub and shower.

(c) Laundry machines:

1. For ENERGY STAR rated laundry machines with a provided Integrated Water Factor, use the following flow projection estimate:

Gpd/occupant = IWF x volume (cu. ft.) x average loads per week / maximum number of days occupied per week

Where:

IWF = Integrated Water Factor (Note: Determination of whether the appliance is designated, has an IWF and to determine the IWF, visit the Department of Energy's ENERGY STAR Certified Residential Clothes Washers website: https://www.energystar.gov/productfinder/product/certified-clothes-washers/)

Volume = Capacity of laundry machine

Maximum number of days occupied per week = seven (7)

2. For ENERGY STAR rated laundry machines without a provided Integrated Water Factor use 8 gpd/occupant for each laundry machine.

3. For laundry machines that are not ENERGY STAR rated use 10 gpd/occupant for each laundry machine.

b. Non-single family users: Graywater treatment works must be sized in accordance with the maximum occupancy and use of the facility. The occupancy must be calculated based on the total, maximum daily population served by the graywater treatment works including but not limited to employees, visitors, and customers. In all cases, the maximum daily population must be based on the maximum potential use of the property and not the current population or use.

i. The estimated graywater flow from each fixture is based on the design flow of the fixture or, if the fixture's design flow is unknown, then the estimated graywater flow per occupant is based on the gallons per day per occupant provided under 86.11(A)(1)(a)(ii) of this regulation.

86.12 Graywater Treatment Works - Design Criteria

A. Design criteria for all graywater treatment works

The following minimum design criteria are required for all graywater treatment works. All graywater treatment works must meet and/or comply with the following requirements:

1. Meet all design requirements of this regulation and meet any additional design requirements of the Colorado Plumbing Code.

2. Each treatment component or combination of multiple components must have a design flow greater than the calculated peak graywater production, if upstream of the storage tank or if no tank is present.

3. Include a diversion valve that directs graywater to either the graywater treatment works or a closed sewerage system. The diversion valve must be:

a. Easily operable;

b. Clearly labeled;

c. Constructed of material that is durable, corrosion resistant, watertight;

d. Designed to accommodate the inlet and outlet pipes in a secure and watertight manner; and

e. Indirectly connect the bypass line to the closed sewerage system.

4. Not have any piping that allows the treatment process(es) or storage tank to be bypassed prior to graywater use.

5. Include a tank to collect and store graywater, except for a subsurface irrigation system that discharges to a mulch basin. The storage tank must:

a. Be constructed of durable, non-absorbent, watertight, and corrosion resistant materials;

b. Be closed and have access openings for inspection and cleaning;

c. Be vented:

i. for indoor tanks: the tanks must be vented to the atmosphere outside of the house;

ii. for outdoor tanks: the storage tank must have a downturned and screened vent;

d. Have an overflow line:

i. with the same or larger diameter line as the influent line;

ii. without a shut off valve;

iii. that is trapped to prevent the escape of gas vapors from the tank; and

iv. that is indirectly connected to the closed sewerage system;

e. Have a valved drain line with the same or larger diameter line as the influent line that is indirectly connected to the closed sewerage system;

f. Be a minimum of 52 gallons;

g. Be placed on a stable foundation;

h. If located outdoors, not be exposed to direct sunlight; and

i. Have a permanent label that states “CAUTION! NON-POTABLE WATER. DO NOT DRINK.”

6. For indoor toilet or urinal flushing systems (Categories C1 and C2) graywater treatment works must have a backup potable water system connection. For subsurface irrigation systems (Categories B1 and B2) graywater treatment works may, but are not required to, have a backup potable water system that provides potable irrigation water when graywater is not being produced or is produced in insufficient quantities. All backup potable water system connections must meet the following requirements:

    a. For non-public water systems, potable water system connections: uncontrolled cross connections between a potable water system and a graywater treatment works are prohibited. All cross connections must be protected by a reduced pressure principle backflow prevention zone assembly or an approved air gap.

    b. For public water systems, potable water system connections: uncontrolled cross connections between a public water system and a graywater treatment works are prohibited. The graywater treatment works design must protect the public water system from cross connections by meeting the requirements of Regulation No. 11: Colorado Primary Drinking Water Regulations.

7. Not be used as a factor to reduce the design, capacity or soil treatment area requirements for OWTS designs per Regulation No. 43 On-site Wastewater Treatment System Regulation or domestic wastewater treatment works designs per Regulation No. 22 Site Location and Design Regulations for Domestic Wastewater Treatment Works.

8. Have any wastewater from graywater treatment works (e.g., filter backwash water) be properly contained and disposed into a closed sewerage system or an approved Underground Injection Control (UIC) well.

9. Have all graywater piping clearly distinguished and clearly labeled, including pipe identification and flow arrows.

10. If located in a 100-year floodplain area, meet or exceed the requirements of FEMA and the local emergency agency. The graywater treatment works must be designed to minimize or eliminate infiltration of floodwaters into the system and prevent discharge from the system into the floodwaters.

11. Not be located in floodways.

12. Be located within the confines of the legal property boundary and not within an easement.

B. Design criteria for subsurface irrigation systems, including mulch basins (Applicable to Graywater Use Categories: A1, B1 and B2)

1. All subsurface irrigation systems (Applicable to Graywater Use Categories: A1, B1 and B2):

    The following minimum design criteria are required for all graywater treatment works being used for subsurface irrigation. All subsurface graywater irrigation systems must comply with the following requirements:

a. Have the subsurface irrigation components of the graywater irrigation system installed a minimum of two inches (2") and a maximum of twelve inches (12") below the finished grade.

b. Have the subsurface irrigation components of the graywater irrigation system installed in suitable soil, as defined in section 86.8(44).

c. Have a minimum of twenty-four inches (24") of suitable soil between the subsurface irrigation components of the graywater irrigation system and any restrictive soil layer, bedrock, concrete, or the highest water table. Restrictive soil layers are soil types 4, 4A, and 5 in Table 12-2.

d. Include controls, such as valves, switches, timers, and other controllers, as appropriate, to ensure the distribution of graywater throughout the entire irrigation zone.

e. If utilizing emitters, the emitters must be designed to resist root intrusion and be of a design recommended by the manufacturer for the intended graywater flow and use. Minimum spacing between emitters shall be sufficient to deliver graywater at an agronomic rate and to prevent surfacing or runoff.

f. Have all irrigation supply lines be polyethylene tubing or PVC Class 200 pipe or better and Schedule 40 fittings. All joints shall be pressure tested at 40 psi (276 kPa), and shown to be drip tight for five minutes before burial. Drip feeder lines can be poly or flexible PVC tubing.

g. Meet the following setback distances in Table 12-1.

Table 12-1: Graywater Treatment Works Setback Requirements

Minimum Horizontal Distance Required from:	**Graywater Storage Tank**	**Irrigation Field**
Buildings	5 feet	2 feet
Property line adjoining private property	10 feet	10 feet
Property line adjoining private property with supporting property line survey	1.5 feet	1.5 feet
Water supply wells	50 feet	100 feet
Streams and lakes	50 feet	50 feet
Seepage pits or cesspools	5 feet	5 feet
OWTS disposal field	5 feet	25 feet
OWTS tank	5 feet	10 feet
Domestic potable water service line	10 feet	10 feet
Public water main	10 feet	10 feet

h. The irrigation field must be located on slopes of less than thirty percent (30%) from horizontal.

i. Protocols for determining the size of the subsurface irrigation area:

The irrigation area must be determined using one of the following protocols.

i) Site evaluation protocol: The following site evaluation must be conducted to determine the appropriate size of the irrigation area for all subsurface irrigation systems.

The site evaluation must include:

(a) Site information, including:

(1) a site map; and

(2) location of proposed graywater irrigation area in relation to physical features requiring setbacks in Table 12-1.

(b) Soil investigation to determine long-term acceptance rate of a graywater irrigation area as a design basis. Soil investigation must be completed by either:

(1) a visual and tactile evaluation of soil profile test pit, or

(2) a percolation test.

(c) Irrigation rates must not exceed maximum allowable soil loading rates in Table 12-2 for Laundry to Landscape systems (Graywater Use Category A1), and Table 12-3 for dispersed subsurface irrigation systems (Graywater Use Categories B1 and B2), based on the finest textured soil in the twenty-four inches (24”) of suitable soil beneath the subsurface irrigation components.

(d) Suitable soil may consist of original, undisturbed soil or original soil that is augmented. Not suitable soil may be augmented as needed to ensure suitable soil is used.

(e) If the original soil is augmented, the mixture used for augmentation must meet the following criteria to ensure that suitable soil is achieved:

(1) The mixture must have an organic content that is at least five percent (5%) and no greater than ten percent (10%);

(2) The mixture must be a well blended mix of mineral aggregate (soil) and compost where the soil ratio depends on the requirements for the plant species; and

(3) The mineral aggregate must have the following gradation:

Sieve Size	Percent Passing
3/8	100
No. 4	95 - 100
No. 10	75 - 90
No. 40	25 - 40
No. 100	4 - 10
No. 200	2 - 5

(f) If the original soil is augmented, the additional soil must be tilled into the native soil a minimum of six inches (6") below irrigation application zone.

2. Mulch basin irrigation system requirements (Applicable to Graywater Use Category: A1)

The following minimum design criteria are required for graywater treatment works using mulch basin systems for subsurface irrigation (Applicable to Graywater Use Category: A1):

a. Design Specifications: System includes only laundry machine discharge water to a mulch basin that is pressurized solely through the laundry machine discharge hose and is not treated, filtered, or stored.

b. Mulch shall be permeable enough to allow infiltration of graywater.

c. Piping to mulch basins must discharge a minimum of two inches (2") below grade into a container for dispersal of graywater into the mulch basin. The container must be designed to have two inches (2") of freefall between the invert of the discharge pipe and the maximum depth of water in the mulch basin. The container must have an access lid for observation of flow and to check mulch levels.

d. The mulch basin must have a minimum depth of twelve inches (12") below grade and not more than twenty-four (24") below grade.

e. A filter is not required for installation.

f. The following irrigation area equation protocols must be used to determine the appropriate size of the mulch basin in square feet for single family, Laundry to Landscape systems. Use equation (i) if actual graywater flow is unknown, and equation (ii) if known. Refer to Table 12-2: Soil Type Description and Maximum Hydraulic Loading Rate for LRG.

Table 12-2: Soil Type Description and Maximum Hydraulic Loading Rate

Soil Type	USDA Soil Texture	USDA Structure – Shape	USDA Soil Structure-Grade	Percolation Rate (MPI)	Loading Rate for Graywater (LRG) (gal./sq. ft./day)
0	Soil Type 1 with more than 35% Rock (>2mm); Soil Types 2-5 with more than 50% Rock (>2mm)	--	0 (Single Grain)	Less than 5	Not suitable without augmentation 1.0 with augmentation
1	Sand, Loamy Sand	--	0	5-15	Not suitable without augmentation 1.0 with augmentation
2	Sandy Loam, Loam, Silt Loam	PR BK GR	2 (Moderate) 3 (Strong)	16-25	0.8
2A	Sandy Loam, Loam, Silt Loam	PR, BK, GR 0 (none)	1 (Weak) Massive	26-40	0.6
3	Sandy Clay Loam, Clay Loam, Silty Clay Loam	PR, BK, GR	2, 3	41-60	0.4
3A	Sandy Clay Loam, Clay Loam, Silty Clay Loam	PR, BK, GR 0	1 Massive	61-75	0.2
4	Sandy Clay, Clay, Silty Clay	PR, BK, GR	2, 3	76-90	Not suitable
4A	Sandy Clay, Clay, Silty Clay	PR, BK, GR 0	1 Massive	91-120	Not suitable
5	Soil Types 2-4A	Platy	1, 2, 3	121+	Not suitable

i. LA = maximum gallons per day allowed/LRG

Where:

The maximum gallons per day allowed is 250 gallons; and

LRG is the loading rate for graywater from Table 12-2; or

ii. LA = estimated actual graywater flow per day/LRG

Where:

The estimated actual graywater flow is derived in 86.11(A)(1)(a)(ii) and;

LRG is the loading rate for graywater from Table 12-2.

g. Soil types 0 and 1 in Table 12-2 must be augmented before use. Soil type 4, 4A, and 5 in Table 12-2 are not suitable for subsurface irrigation.

3. Dispersed subsurface irrigation system requirements (Applicable to Graywater Use Categories: B1 and B2):

The following minimum design criteria are required for graywater treatment works using dispersed irrigation systems for subsurface irrigation:

a. Include a cartridge filter, which must meet the following requirements:

i. A minimum of 60 mesh;

ii. Located between the storage tank and the irrigation system;

iii. If a pump is being used to pressurize the graywater distribution system, the filter must be located after the pump.

b. The following irrigation area equation protocols must be used to determine the appropriate size of the irrigation area for single family and non-single family, dispersed subsurface irrigation systems (Applicable to Graywater Use Categories B1 and B2). Refer to Table 12-3: Soil Type and Maximum Absorption Capacity in gallons per square foot of irrigation area per day.

Table 12-3: Soil Type and Maximum Absorption Capacity

2024 Uniform Plumbing Code Soil Type	2024 Uniform Plumbing Code Maximum absorption capacity in gallons per square foot of irrigation area per day
Course sand or gravel	5.0
Fine Sand	4.0
Sandy loam	2.5
Sandy clay	1.7
Clay with considerable sand or gravel	1.1
Clay with small amounts of sand or gravel	0.8

i. LA = gpd/MAC in gal/ft^2

Where:

Gpd = gallons per day per household or non-single family combined (actual graywater flow is derived in 86.11(A)(1)(a) for single family, 86.11(A)(1)(b) for non-single family)

MAC = maximum absorption capacity in gallons per square foot

C. Design criteria for indoor toilet and urinal flushing graywater treatment works (Graywater Use Categories C1 and C2)

1. Category C1: single family, indoor toilet and urinal flushing graywater treatment works

The following minimum design criteria are required for graywater treatment works for Category C1: single family, indoor toilet and urinal flushing:

a. The graywater treatment works must be certified under “Class R” of NSF/ANSI 350 Onsite Residential and Commercial Water Reuse Treatment Systems.

b. If a disinfection process is not part of NSF/ANSI 350-2011 equipment, separate disinfection system equipment is required. For graywater treatment works that use sodium hypochlorite (bleach), the graywater treatment works must be capable of providing a free chlorine residual of 0.2 to 4.0 mg/L in the graywater throughout the indoor graywater plumbing system.

c. The graywater treatment works must include a dye injection system that is capable of providing a dye concentration that is visibly distinct from potable water.

d. For Category C1 indoor toilet and urinal flushing graywater treatment works that are also capable of using graywater for subsurface irrigation, the system may be designed to allow graywater to be diverted to the subsurface irrigation graywater treatment works prior to the disinfection and dye process, however after the point of diversion the subsurface irrigation portion of the system must meet the requirements in section 86.12(B).

2. Category C2: non-single family, indoor toilet and urinal flushing graywater treatment works

The following minimum design criteria are required for Category C2: non-single family, indoor toilet and urinal flushing:

a. The graywater treatment works must be certified under “Class R” or “Class C” of NSF/ANSI 350 Onsite Residential and Commercial Water Reuse Treatment Systems. Required classification shall be dictated by the size of the graywater treatment works and if the graywater sources are residential or commercial as defined by NSF/ANSI 350.

b. Separate disinfection system equipment is required if a disinfection process is not part of NSF/ANSI 350-2011 equipment. A graywater treatment works must be capable of providing a free chlorine residual of 0.2 to 4.0 mg/L in the graywater throughout the indoor graywater plumbing system.

c. The graywater treatment works must include a dye injection system that is capable of providing a dye concentration that is visibly distinct from potable water.

d. For Category C2 indoor toilet and urinal flushing graywater treatment works that are also capable of using graywater for subsurface irrigation, the system may be designed to allow graywater to be diverted to the subsurface irrigation graywater treatment works prior to the disinfection and dye process, however after the point of diversion the subsurface irrigation portion of the system must meet the requirements in section 86.12(B).

e. For graywater treatment works that have a capacity to receive greater than 2,000 gallons per day, the design must be prepared under the supervision of and submitted with the seal and signature of a professional engineer licensed to practice engineering in the State of Colorado in accordance with the requirements of the Colorado Department of Regulatory Agencies (DORA) – Division of Professions and Occupations.

D. Design criteria for rural fire protection graywater treatment works (Graywater Use Categories D1 and D2)

1. Category D1: single family, rural fire protection graywater treatment works

The following minimum design criteria are required for graywater treatment works for Categories D1: single family, rural fire protection:

a. The graywater treatment works must be authorized by the local fire protection district and meet minimum treatment requirements of the local fire protection district in addition to the design criteria included herein.

b. The graywater treatment works must be certified under “Class R” NSF/ANSI 350 Onsite Residential and Commercial Water Reuse Treatment Systems.

c. If a disinfection process is not part of NSF/ANSI 350-2011 equipment, separate disinfection system equipment is required. For graywater treatment works that use sodium hypochlorite (bleach), the graywater treatment works must be

capable of providing a free chlorine residual of 0.2 to 4.0 mg/L prior to graywater entering the storage cistern.

d. For Category D1 graywater treatment works that are also capable of using graywater for subsurface irrigation or indoor fixture flushing, the system may be designed to allow graywater to be diverted to the subsurface irrigation graywater treatment works prior to the dye process, however after the point of diversion the subsurface irrigation portion of the system must meet the requirements in section 86.12(B).

2. Category D2: non-single family, rural fire protection graywater treatment works

The following minimum design criteria are required for graywater treatment works for Categories D2: non-single family, rural fire protection:

a. The graywater treatment works must be authorized by the local fire district/authority and meet minimum treatment requirements of the local fire district/authority in addition to the design criteria included herein.

b. The graywater treatment works must be certified under “Class R” or “Class C” of NSF/ANSI 350 Onsite Residential and Commercial Water Reuse Treatment Systems. Required classification shall be dictated by the size of the graywater treatment works and if the graywater sources are residential or commercial as defined by NSF/ANSI 350.

c. If a disinfection process is not part of NSF/ANSI 350-2011 equipment, separate disinfection system equipment is required. For graywater treatment works that use sodium hypochlorite (bleach), the graywater treatment works must be capable of providing a free chlorine residual of 0.2 to 4.0 mg/L prior to graywater entering the storage cistern.

d. For Category D2, rural fire protection graywater treatment works that are also capable of using graywater for subsurface irrigation or indoor fixture flushing, the system may be designed to allow graywater to be diverted to the subsurface irrigation graywater treatment works prior to the dye process, however after the point of diversion the subsurface irrigation portion of the system must meet the requirements in section 86.12(B).

e. For graywater treatment works that have a capacity to receive greater than 2,000 gallons per day, the design must be prepared under the supervision of and submitted with the seal and signature of a professional engineer licensed to practice engineering in the State of Colorado in accordance with the requirements of the Colorado Department of Regulatory Agencies (DORA) – Division of Professions and Occupations.

86.13 Signage Requirements for Graywater Treatment Works

A. Signage requirements for non-single family graywater treatment works (Applicable to Graywater Use Categories B2, C2, and D2)

1. All required notifications shall include posting of signs of sufficient size to be clearly read with the language below in the dominant language(s) expected to be spoken at the site.

B. All non-single family graywater treatment works (Graywater Use Categories: B2, C2, and D2

All non-single family graywater treatment works must comply with the following signage requirements.

1. A permanent warning sign must be visible at all fixtures from which graywater is collected. The signs must state that, “WATER FROM THIS FIXTURE IS REUSED. CHEMICALS, EXCRETA, PETROLEUM OILS AND HAZARDOUS MATERIALS MUST NOT BE DISPOSED DOWN THE DRAIN”;

2. Each room that contains graywater treatment works components must have a sign that says “CAUTION GRAYWATER TREATMENT WORKS, DO NOT DRINK, DO NOT CONNECT TO THE POTABLE DRINKING WATER SYSTEM. NOTICE: CONTACT BUILDING MANAGEMENT BEFORE PERFORMING ANY WORK ON THIS WATER SYSTEM.”

C. Non-single family, subsurface irrigation graywater treatment works (Graywater Use Category B2)

1. Non-single family, subsurface irrigation graywater treatment works (Category B2, if applicable) must comply with the following signage requirement:

a. Each irrigation area must have a sign that says “CAUTION GRAYWATER BEING USED FOR IRRIGATION. DO NOT DRINK, DO NOT CONNECT TO THE POTABLE DRINKING WATER SYSTEM.”

D. Non-single family, indoor toilet or urinal flushing, non-single family graywater treatment works (Graywater Use Category C2)

1. Non-single family, indoor toilet and urinal flushing graywater treatment works (Category C2) must comply with the following signage requirement:

a. Each toilet and urinal must have a sign that says: “TO CONSERVE WATER, THIS BUILDING USES TREATED NON-POTABLE GRAYWATER TO FLUSH TOILETS AND URINALS.”

E. Single family and non-single family, rural fire protection graywater treatment works (Graywater Use Categories: D1 and D2)

1. Single family and non-single family, rural fire protection graywater treatment works (Category D1 and D2, if applicable) must comply with the following signage requirement:

a. Each storage cistern must have a sign that says “CAUTION GRAYWATER BEING USED FOR RURAL FIRE PROTECTION SUPPLY ONLY. DO NOT DRINK, DO NOT CONNECT TO THE POTABLE DRINKING WATER SYSTEM.”

86.14 Graywater Use Requirements - Control Measures

A. Control measures are operational requirements representing best management practices that graywater treatment works must follow when operating a graywater treatment works.

B. Control measures that apply to all graywater uses:

All graywater treatment works must be operated in accordance with the following control measures:

1. Graywater must be collected in a manner that minimizes the presence or introduction of:

    a. hazardous or toxic chemicals in the graywater to the greatest extent possible;

    b. human excreta in the graywater to the greatest extent possible;

    c. household wastes;

    d. animal or vegetable matter, and

    e. for Laundry to Landscape systems (Graywater Use Category A1), this includes control over the type of clothing in the washing machine (e.g. no reusable diapers; not using graywater when someone in the household is sick).

2. Use of graywater is limited to the confines of the facility that generates the graywater.

3. The graywater treatment works must be operated and maintained in accordance with the O&M manual, including all manufacturer recommended maintenance activities. The O&M manual must remain with the graywater treatment works throughout the system's life and be updated based on each modification and approval made to the system. The O&M manual must be transferred, upon change of ownership or occupancy, to the new owner or tenant.

    a. For Category C2 graywater treatment works that have a capacity to receive greater than 2,000 gallons per day (gpd), operational and maintenance records must be maintained for a minimum of the past five (5) years.

4. The owner or operator of a graywater treatment works must minimize exposure of graywater to humans, domestic pets, and other animals.

5. Graywater use and graywater treatment works must not create a public nuisance.

6. Graywater must not be stored for more than 24 hours unless the graywater has been treated by a graywater treatment works that meets the design requirements of section 86.12. All graywater must be stored inside a tank(s) that meets the design requirements of section 86.12(A)(5).

7. Temporary or semi-temporary connections from the potable water system or public water system to the graywater treatment works are prohibited. Permanent connections from the potable water system or public water system to the graywater treatment works must meet the design requirements of 86.12(A)(6).

C. Control measures that apply to subsurface irrigation graywater use, including mulch basins (Graywater Use Categories: A1, B1, and B2)

Subsurface irrigation graywater treatment works must be operated in accordance with the following additional control measures:

1. Edible crop irrigation is prohibited for non-single family subsurface irrigation (Graywater Use Category: B2).

2. Edible crops irrigated with graywater treatment works must be washed with potable water prior to consumption.

3. Edible crops irrigated with graywater treatment works must be for personal consumption only and not for sale.

4. Single family units that allow for short term rentals (e.g. Airbnb, VRBO, etc.) are prohibited from using graywater for edible crop irrigation and Laundry to Landscape graywater treatment works.

5. Irrigation of sprouts, leafy greens and root crops is prohibited.

6. Irrigation is prohibited when the ground is frozen, plants are dormant, during rainfall events, or the ground is saturated.

7. Irrigation scheduling must be adjusted so that application rates are closely matched with soil and weather conditions.

8. Graywater must be applied in a manner that does not result in ponding, runoff, or unauthorized discharge to state waters. For dispersed subsurface irrigation systems, the graywater must be applied at an agronomic rate. For mulch basins systems, the graywater must not be applied in excess of the soil adsorption rate.

9. For mulch basin systems, mulch must be replenished and undergo periodic maintenance as needed to reshape or remove material to maintain surge capacity and to prevent ponding and runoff.

D. Control measures that apply to indoor toilet and urinal flushing graywater use (Graywater Use Categories: C1 and C2)

Indoor toilet and urinal flushing graywater treatment works (Categories C1 and C2) must be operated in accordance with the following additional control measures.

1. Graywater for toilet and urinal flushing use must be disinfected.

    a. Graywater treatment works that utilize chlorine for disinfection must have a minimum of 0.2 mg/L and a maximum of 4.0 mg/L of free chlorine residual throughout the indoor graywater plumbing system, including fixtures.

    b. Single family graywater treatment works that utilize non-chemical methods, such as UV, for disinfection must have a chlorine puck present in each toilet or urinal tank.

2. Graywater for toilet and urinal flushing must be dyed with either blue or green food grade vegetable dye and be visibly distinct from potable water.

E. Control measures that apply to rural fire protection graywater use (Graywater Use Categories: D1 and D2)

Rural fire protection graywater treatment works (Categories D1 and D2) must be operated in accordance with the following additional control measures.

1. Graywater for rural fire protection use must be stored in a watertight storage cistern consistent with 86.10(F)(3) for single family graywater treatment works and 86.10(G)(3) for non-single family graywater treatment works.

2. Graywater for rural fire protection use must be disinfected prior to graywater entering the storage cistern.

    a. Graywater treatment works that utilize chlorine for disinfection must have a minimum of 0.2 mg/L and a maximum of 4.0 mg/L of free chlorine residual throughout the indoor graywater plumbing system, prior to being pumped to the storage cistern; or

    b. UV disinfection prior to being pumped to the storage cistern.

3. The local fire district/authority must be notified and agree to graywater use for fire protection prior to its adoption and use in a local city, city and county or county.

86.15 Operation and Maintenance Manual

All graywater treatment works must have an O&M manual. The O&M manual must include the following items:

A. A graywater treatment works description including: equipment list, design basis data including but not limited to, design volumes, design flow rates of each component and service area, system process description, system schematic drawing for single family Graywater Use Categories (A1, B1, C1 and D1), and system as-built drawing for non-single family Graywater Use Categories (B2, C2 and D2).

B. Maintenance information for the graywater treatment works, including but not limited to: component maintenance schedule, instructions for component repair, replacement, or cleaning, replacement component source list, testing and frequency for potable containment device, and instructions for periodic removal of residuals.

C. Operational ranges for parameters (except for Category A1: Laundry to Landscape systems), including but not limited to: disinfectant concentration levels, filter replacement parameters, pressure ranges, tank level, and valve status under normal operation.

D. Step-by-step instructions for starting and shutting down the graywater treatment works, including but not limited to: valve operation, any electrical connections, cleaning procedures, visual inspection, and filter installation.

E. A guide for visually evaluating the graywater treatment works and narrowing any problem scope based on alarm activations, effluent characteristics, system operation, and history.

F. A list of graywater control measures in which the graywater treatment works must be operated (except for Category A1: Laundry to Landscape systems).

86.16 Operation by Designated Responsible Person and Certified Operator

A. Graywater treatment works for non-single family Graywater Use Categories require a designated responsible person who is knowledgeable with the duties including, as appropriate, specific measures used to operate treatment, monitoring, inspection, planning, reporting and documentation requirements. The designated responsible person must:

1. Be designated by the legally responsible party,

2. Conduct operations and maintenance in accordance with the graywater treatment works manufacturer's recommendations and the professional engineer's recommendations,

3. Ensure compliance with the Operation and Maintenance Manual in this regulation, and

4. Ensure compliance with the local agency's ordinance or resolution, including monitoring and reporting requirements.

B. A graywater treatment works with a design capacity greater than 2,000 gpd must be operated by qualified personnel who meet any applicable requirements of Regulation No. 100, the Water and Wastewater Facility Operators Certification Requirements.

86.17 - 86.20 Reserved

86.21 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; APRIL 13, 2015 RULEMAKING, FINAL ACTION MAY 11, 2015, EFFECTIVE JUNE 30, 2015

The provisions of sections 25-8-202(1)(c) and 25-8-205(1)(g), C.R.S., provide the specific statutory authority for the Graywater Control Regulation adopted by the Water Quality Control Commission (commission). The commission has also adopted, in compliance with section 24-4-203(4), C.R.S., the following statement of basis, specific statutory authority, and purpose.

BASIS AND PURPOSE

I. Purpose

The commission has determined that the adoption of the requirements set forth in Regulation #86 are necessary to protect public health and the environment in the state. The commission believes that the implementation of graywater use in Colorado will proceed more expeditiously by limiting the initial regulatory scope. This approach promotes development of local graywater programs through two initial graywater uses with specific treatment and control measure requirements. The commission expects the adoption of modifications to Regulation #86 over time to allow for additional graywater uses, graywater users, and expanded treatment options. The commission anticipates future reviews of this regulation to include a review for improved organization and readability, and also anticipates that the next review will consider whether to allow agricultural irrigation as a use, and whether to adopt variance provisions.

It is the intent of the commission that this regulation promote the use of graywater by providing a comprehensive framework which, when followed, will assure responsible use of graywater compatible with the state's public policy to foster the health, welfare and safety of the inhabitants of the state of Colorado and to protect, maintain, and improve, where necessary and reasonable, the water quality in Colorado.

II. House Bill 13-1044 Background

House Bill 13-1044 was signed into law on May 15, 2013, and authorizes the use of graywater in Colorado. The legislation defined "graywater" and "graywater treatment works" and established a basic implementation framework for graywater use within Colorado.

Under the statute, each local city, city and county, or county are able to decide whether to allow graywater use within its jurisdiction via the adoption of a resolution or ordinance that meets minimum local, state and federal requirements, including but not limited to the Colorado Plumbing Board regulations, local graywater control programs, water rights requirements, and operator certification requirements. All graywater users must wait until all relevant regulations are effective before implementing graywater treatment works.

III. Regulatory Goals

Through adoption of this regulation, the commission is encouraging the use of graywater. Because graywater has the potential to be a human pathogen pathway, the commission is adopting measures to adequately protect public health. The graywater regulation is structured so that local governments will have flexibility to adopt ordinances, resolutions, and rules that are appropriate in each individual circumstance. Local graywater control programs are voluntary, and may allow one or both of the authorized graywater uses. The local graywater control program may be more stringent but must meet the minimum requirements of Regulation #86. Since neither the local implementing agencies nor the state agencies were allocated funds for graywater regulation, ordinance, code, resolution, and other supporting graywater control legal framework, the regulation aims to be cognizant of resource limitations linked to local implementation. At this time, the commission is authorizing two graywater uses – indoor toilet flushing and outdoor subsurface irrigation. The commission anticipates that the allowed graywater uses may be expanded in the future after Colorado gains some experience and further scientifically based research can define the risks and benefits.

IV. Applicability

The statute states that, “graywater may only be used in areas where the local city, city and county, or county has adopted an ordinance or resolution approving the use of graywater”, and ordinances and resolutions must be “in compliance” with the commission’s regulation and other federal, state, and local. §§ 25-8-205(1)(g)(II), 31-11-107(1) and 31-15-601(1)(m), C.R.S.

The Commission declined to grandfather preexisting graywater systems. All graywater systems in Colorado must meet the requirements of this regulation.

There are some on-site waste water treatment systems (“OWTS”) that, in addition to disposal, use some of the water generated from these systems for subsurface irrigation. The purpose of these systems is sewage disposal. These systems were approved prior to May 15, 2013, pursuant to *Regulation #43: On-Site Wastewater Treatment System Regulation* (“OWTS”) (5 CCR 1002-43.4(J) or *Individual Sewage Disposal System Guidelines* (“ISDS") (5 CCR 1003-6.IV.J) which allows a local public health agency to approve “experimental” OWTS or ISDS systems. The record indicated there are a small number of these systems, less than 10. The Commission adopted section 86.6(A)(2) to address these systems. These systems will continue to operate under Regulation No. 43 and will be deemed in compliance with this regulation unless and until modifications are made, at which time the system will need to evaluate its system and to the extent applicable must come into compliance with requirements of this regulation.

A local city, city and county or county that adopts a graywater ordinance or resolution must include the ability to compel graywater users to discontinue the practice in the event the program is discontinued. Where a local jurisdiction adopts a local graywater program, and later decides to discontinue the local graywater control program, the local government may either fully discontinue the program or adopt a limited graywater control program to allow existing graywater systems to continue. The “limited graywater

control program" option means that the previously adopted local control program (including all Regulation #86 requirements) can be limited to the existing graywater treatment works and that no additional applications for graywater systems will be accepted.

V. Enforcement and Division Oversight

The statute conveys exclusive enforcement authority regarding compliance with the local ordinance or resolution to the local jurisdiction. The commission does not intend to directly enforce on individual users or graywater treatment works that are located within a local graywater control program. In cases where there is no local graywater control program in place, graywater use within the local jurisdiction will not be authorized and the user (not the local agency) may face enforcement action from the Water Quality Control Division (division).

A local city, city and county, or county that chooses to adopt a local graywater control program must notify the Division within 60 days of adoption and provide a copy of the ordinance, or resolution and, if applicable, rule. The division may review the ordinance or resolution to ensure that the ordinance or resolution meets the minimum intent of Regulation #86, and may take action to compel any local graywater program to conform to the minimum requirements of the regulation.

VI. Definitions

The commission relied upon existing regulatory definitions where possible and adopted definitions for several terms not already defined in statute. The definitions of the terms "cross-connection" and "public water system" were taken from Regulation #11: Colorado Primary Drinking Water Regulations. The definitions of the terms "component", "design", "design flow", "floodplain", "floodway", "local public health agency", "on-site wastewater treatment system", "percolation test", "site evaluation", "soil horizon", "soil profile test pit", and "soil structure" were taken or modified from Regulation #43: On-site Wastewater Treatment System Regulation. The definitions of the terms "agronomic rate", "agricultural irrigation", and "Division" were taken or modified from Regulation #84: Reclaimed Water Control Regulation. The definition for "indirect connection" was modified from the International Plumbing Code 2012 edition definition of an "indirect waste pipe". The definitions of the terms "suitable soil" and "subsurface irrigation" were modified from Washington Administrative Code Chapter 246-274.

The commission created definitions for "closed sewerage system", "facility", "legally responsible party", "local agency", "local graywater control program", "modification", "public nuisance", and "single family".

VII. Administration

In section 86.9 of the regulation, the commission set mandatory minimum requirements for a resolution or ordinance and, if applicable, rule as adopted by a local agency. The minimum requirements are intended to ensure that the local graywater control program meets the statutory requirements and to ensure a comprehensive graywater program. Based on stakeholder feedback, the regulation allows some administration elements to be authorized in rule, rather than in ordinance or resolution. The minimum requirements are meant to be flexible recognizing that many local agencies will incorporate graywater into existing business processes. A local agency may adopt more stringent standards in its ordinance, resolution, or rule.

A local government may only authorize graywater use in accordance with federal, state, and local requirements. The city, city and county, or county is ultimately responsible for legal compliance with its own ordinance or resolution. Before a local city, city and county, or county adopts an ordinance or resolution to authorize the use of graywater, a board of county commissioners or a municipal governing

body is encouraged to coordinate with other local agencies, including but not limited to, the local board of health, local public health agencies, any water and wastewater service providers, and basin water quality authorities. Coordination with other local agencies may be accomplished through memorandums of agreement, memorandums of understanding, agency referral mechanism, or agency agreements. The commission anticipates there may be circumstances where one regulatory entity's rules and regulations could impact the legality of graywater use in a portion of an overall jurisdiction. For example, if a county allows graywater use but a portion of the county is served by a public water system that does not have appropriate water rights to allow graywater uses, this portion of the county must be excluded from the local graywater control program.

The ordinance, resolution, or rule must clearly state the requirements for graywater use within the jurisdiction. The local graywater control program must outline: the allowed graywater category(ies), the graywater treatment design criteria, site and soil evaluation methodology (if applicable), any regulatory fees, any testing requirements, or specific local requirements. The regulation does not require that an ordinance impose fees or water quality reporting.

A local agency's graywater program must include a tracking mechanism for all graywater treatment works, a regulatory approval process, and mechanisms to ensure that on-going graywater use is done in compliance with the requirements of the resolution, ordinance, or rule (e.g., control measures are being met). The commission concludes that a local graywater program must address all graywater treatment works within a jurisdiction, including single family users. Current information on the installed graywater treatment works will be useful in the event of an outbreak investigation and during property transfers. Information regarding the legally responsible party associated with every graywater treatment works will also allow the local jurisdiction to have a contact for the decision maker of each graywater treatment works.

The commission determined that the ordinance or resolution must define the local regulatory structure to implement the program to ensure compliance with the resolution or ordinance. The ordinance or resolution must clearly state which agency(ies) are involved in a local graywater control program and each agency's roles and responsibilities. These requirements are meant to encourage coordination within and between agencies.

Since the local jurisdiction will have enforcement authority, the local graywater control program must include violation notification mechanisms and escalation or enforcement actions. Possible violations of the ordinance or resolution that cause enforcement actions include, but are not limited to: not testing backflow prevention devices as required, not complying with control measures, and installation of a new or modification of an existing system without going through an approval process.

The local jurisdiction will be responsible for coordinating with the Water and Wastewater Facility Operator Board to ensure that any Regulation #100: Water and Wastewater Facility Operator Certification Requirements are being satisfied. The commission encourages local jurisdictions to incorporate a mechanism for operator compliance assurance and a referral mechanism to the Water and Wastewater Facility Operator Board.

VIII. Graywater Categories

The commission is authorizing two uses for graywater - subsurface irrigation and indoor toilet /urinal flushing. There were several factors that guided the commission in determining the graywater categories within the two allowed graywater uses, including the population exposed, potential health exposure, potential cross-connection control risk, and environmental risk. The commission established a major category distinction between a single family residential user and all other users (referred to in the

regulation as non-single family). The commission anticipates that a single family user will be financially and personally vested in keeping the household graywater treatment works operating properly. Single family residents will likely be aware of the health status of the other residents in their immediate household. In contrast, non-single family users may not be as diligent in following graywater control measures, may not understand the implications to other graywater users, or may not be responsible for maintaining a graywater treatment works. Accordingly, four graywater use categories were created to address single family and non-single family graywater use for subsurface irrigation (Categories A and B) and indoor toilet and urinal flushing (Categories C and D).

Within the four graywater categories, the commission is adopting daily graywater flow restrictions to ensure that graywater treatment works are consistent with other commission regulations. The commission decided to define a daily graywater flow rate rather than use the building occupancy for a variety of reasons. A daily flow rate is more consistent with the plumbing code, and is more consistent with other commission regulations. Based on a joint American Water Works Association Research Foundation (AwwaRF) and American Water Works Association (AWWA) study titled the Residential End Uses of Water, approximately 30 to 35 gallons per day (gpd) of graywater is produced per person and approximately 18.5 gpd/person is used for toilet flushing. The commission decided on a flow limit of 400 gpd for single family users which is roughly the amount of graywater produced by 10 people and the amount that 22 people could use for indoor toilet flushing. The non-single family limit of 2,000 gpd is roughly the amount of graywater produced by 50 people and the amount that 108 people could use for indoor toilet flushing.

Graywater is expected to contain nitrogen, phosphorus, and total dissolved solids which are regulated pollutants for groundwater discharges under Regulation #41 (5 CCR 1002-41). The commission determined that the potential risks to groundwater from graywater systems are similar to the risk posed by decentralized onsite wastewater treatment systems. Therefore, at the same time as adopting this control regulation, the commission revised Regulation #61 (section 61.14(1)(b)) to exempt graywater treatment works from the requirement to obtain a discharge permit.

IX. Control Measures

In addition to design requirements, the commission is adopting control measures, which are the required routine actions for graywater treatment works. The control measures compliment the design criteria. The control measures attempt to control potential graywater exposure though: limitation of graywater contamination at the point of production (e.g., sink), proper operation of the treatment process, and limitation of graywater exposure (e.g., toilet or irrigation system). For example, the design criteria for indoor toilet flushing use requires the installation of a dye injection system and the associated control measure is the daily operation of the dye injection system. The control measures are the critical barrier to protect public health and environment after installation of the graywater treatment works. The adopted control measures were developed after reviewing other states' graywater programs and the International Plumbing Code requirements. Some control measures are required for all graywater uses, while other control measures are only required for subsurface irrigation or indoor toilet flushing.

A. Control measures required for all graywater uses

- Graywater must be collected in a manner that minimizes the presence or introduction of hazardous or toxic chemicals to the greatest extent possible. Residual hazardous or toxic chemicals may result from activities including, but not limited to: the use of cleaning chemicals; the use of hazardous household products; waste from a water softener; cleaning car parts; washing greasy or oily rags or clothing; rinsing paint brushes; disposal of pesticides, herbicides, or other chemicals; disposing of waste solutions from home

photo labs or similar hobbyist or home occupation activities; or from other home maintenance activities.

- *Graywater must be collected in a manner that minimizes the presence or introduction of human excreta to the greatest extent possible.* Human excreta may result from activities such as, but not limited to: washing diapers, washing soiled garments, and washing infectious garments.

- *Graywater must be collected in a manner that minimizes the presence or introduction of household wastes*. Residual household wastes may result from activities including, but not limited to: the use of cleaning chemicals; pharmaceuticals, or from home maintenance activities.

- *Graywater must be collected in a manner that minimizes the presence or introduction of animal or vegetable matter.* Animal or vegetable matter may result from activities such as but not limited to: cooking, cleaning, and washing pets

- *Use of graywater is limited to the confines of the facility that generates the graywater.* This control measure is a statutory requirement.

- *The graywater treatment works must be operated and maintained in accordance with the O&M manual, including all manufacturer recommended maintenance activities.* On the surface this control measure is similar to the administration section which requires each graywater treatment works to have an O&M manual. However, this control measure requires that the O&M manual be actively followed and be used to guide proper operation and maintenance of a graywater treatment works. The commission included a five (5) year minimum O&M recordkeeping requirement for Category D graywater treatment works that have a capacity to receive equal to or greater than 2,000 gallons per day since maintenance of these systems will be essential to protect public health. In the event of an outbreak, having records will allow public health officials to have a baseline of operational information to ensure that the graywater treatment works was properly operated.

- *The owner or operator of a graywater treatment works must minimize exposure of graywater to humans and domestic pets.* Research indicates that graywater is to be expected to contain human pathogens. Therefore, the commission considers minimization of exposure to humans and pets as a common sense measure to limit possible pathogen pathways. The commission understands that some exposures will be necessary for graywater treatment works maintenance, cleaning, aerosolization when flushing of urinals and toilets, and irrigation system maintence. Users should be aware that human pathogens are likely present, and should therefore limit their exposure as much as possible and take protective measures.

- *Graywater use and graywater treatment works must not create a public nuisance.* Graywater use and graywater treatment works must not create public nuisances such as odors and disease vectors (e.g., mosquitoes) habitat.

- *Graywater must not be stored for more than 24 hours unless the graywater has been treated by a graywater treatment works that meets the design requirements of section 86.12. All graywater must be stored inside a tank(s) that meets the design requirements of section 86.12.* Graywater stored for an extended time period will create an environment that encourages microorganism growth. Extended storage of untreated

graywater will result in anaerobic (a.k.a. no oxygen) conditions and unpleasant odors. Colorado water rights laws will likely impact storage of treated graywater for an extended time period. In addition, this requirement is in conformance with the 2015 International Plumbing Code.

- *Temporary or semi-temporary connections from the potable water system or public water system to the graywater treatment works are prohibited. Permanent connections from the potable water system or public water system must be controlled with an appropriate backflow prevention assembly or backflow prevention method.* Temporary potable water connections to graywater treatment works are not allowed. An example of a temporary connection is a hose submerged in a graywater storage tank to provide irrigation water during vacation. The prohibition was put in place since temporary connections will not undergo design approval or have an appropriate backflow prevention assembly or backflow prevention method. While temporary connections are prohibited, graywater treatment works may have a permanent connection from a potable water system or public water system. Permanent connections from the potable water system or public water system must be controlled with an appropriate backflow prevention assembly or backflow prevention method as required in section 86.12.

B. Additional control measures required for subsurface irrigation use

- *Agricultural irrigation with graywater is prohibited*. In order to be protective of public health, and because insufficient information was presented at this hearing to fully evaluate the risk to public health, graywater may not be used for agricultural irrigation. The definition of agricultural irrigation includes household gardens, fruit trees, and other flora intended for human consumption. This is especially critical for local jurisdictions that allow household produced food products to be sold at farmers markets. The commission considers “human consumption” to mean any food or beverage consumed by humans, regardless of the processing method (e.g., raw, fermented, baked, canned).

- *Irrigation is prohibited when the ground is frozen, plants are dormant, during rainfall events, or the ground is saturated.* The commission intends to ensure that graywater use does not result in ponding, runoff, or unauthorized discharge to state waters. Therefore, graywater irrigation under these conditions is not allowed.

- *Irrigation scheduling must be adjusted so that application rates are closely matched with soil and weather conditions*. The amount of water needed for irrigation is dependent on a variety of local conditions such as the flora being irrigated, weather condition, and local soils. The user needs to be mindful that the required amount of graywater and nutrients will change over time and therefore the graywater application rate must also be adjusted.

- *Graywater must be applied at an agronomic rate which does not result in ponding, runoff, or unauthorized discharge to state waters.* The definition of agronomic rate is generally consistent with the definition from Regulation #84 (which addresses centralized reclaimed water operations). While this regulation does not require a water quality test, such testing is encouraged. Graywater use must not result in ponding, runoff, or unauthorized discharge to state waters.

- *For mulch basin systems, mulch must be replenished as required due to decomposition of organic manner. Mulch basins must undergo periodic maintenance, reshaping or removal of material to maintain surge capacity and to prevent ponding and runoff.*

Microbial activity within the mulch basins will result in decomposition of organic material. To maintain the required storage volume and soil permeability, the mulch beds must undergo routine maintenance. This requirement was based on the 2013 California Plumbing Code.

C. Additional control measures required for indoor toilet flushing use

- *Graywater for toilet and urinal flushing use must be disinfected*. Graywater research indicates that graywater is to be expected to contain human pathogens. Therefore, the commission is using a multi-barrier approach, including the addition of a potent disinfectant to inhibit the presence of organisms, pathogens and viruses in the graywater distribution system.

- *Graywater treatment works that utilize chlorine for disinfection must have a minimum of 0.2 mg/L and a maximum of 4.0 mg/L of free chlorine residual throughout the indoor plumbing system, including fixtures.* The free chlorine residual requirement is generally consistent with Regulation #11. The commission is not implying that graywater for indoor toilet and urinal flushing must be treated to potable water standards, as defined by Regulation #11, but that a free chlorine residual range of 0.2 to 4.0 mg/L is reliably detectable and not high enough to adversely impact plumbing fixtures.

- *Single family graywater treatment works that utilize non-chemical methods, such as UV, for disinfection must have a chlorine puck present in each toilet tank.* The commission wants to give some flexibility to Category C systems and not require chlorine injection for all systems. Since some disinfectants, such as UV, do not have a residual present in the distribution system, a chlorine puck will inhibit the presence of organisms, pathogens, and viruses within the toilet tank and bowl.

- *Graywater for toilet and urinal flushing must be dyed with either blue or green food grade vegetable dye and be visibly distinct from potable water.* The commission adopted this requirement from the 2012 International Plumbing Code. Dye is a visual indicator that the water within the building is non-potable. Because single family households are not required to have signage for indoor toilet flushing, the dye serves as the notification method that a cross connection has occurred and graywater is entering the potable water lines of the operation.

X. Treatment Works Design Criteria

A. Design criteria treatment basis

For dispersed subsurface irrigation, the commission's intention with the design criteria is to protect the subsurface irrigation system from failure. The commission anticipates that without filtration, graywater irrigation systems would fail in a similar manner to an OWTS soil treatment area. Therefore, the commission is requiring filtration prior to the irrigation distribution system to inhibit failure of the emitter systems by particulate or bio-growth clogging. Irrigation system failure will result in surfacing graywater, unequal distribution, and discharge to groundwater.

For subsurface irrigation mulch basin systems, the commission's intention is to ensure that the mulch basin has an adequate volume for surge events and that the soil is capable of adsorption of any excess graywater that is not utilized by the flora. Mulch basin system failure will result in clogged mulch basins, surfacing graywater, and excessive discharge to groundwater.

For indoor toilet and urinal flushing, the commission is requiring a treatment technology that will be protective of public health and will consistently treat graywater without on-going water quality testing. Graywater research indicates that graywater is to be expected to contain human pathogens. Graywater is an emerging research area and peer reviewed research regarding graywater as a potential disease vector and treatment technology impacts on human pathogens are limited. Until additional graywater research studies indicate a definite public health safety threshold, the commission selected the ANSI/NSF 350-2011 standard for indoor toilet and urinal flushing. ANSI/NSF 350 is a performance based treatment testing protocol which requires a third party review of water quality data. The ANSI/NSF 350 standard is required in the 2015 International Plumbing Code and is required by other western states that allow indoor toilet flushing with graywater. The 2013 California Plumbing Code sets ANSI/NSF 350 as the minimum water quality standards (unless the authority having jurisdiction has other water quality requirements). Oregon allows indoor use with an ANSI certified graywater standard. In addition to ANSI/NSF 350 treatment, the commission is requiring dye to visually differentiate graywater from potable water, as well as requiring a disinfectant to prevent biological growth in the graywater distribution system.

B. Flow projections

The commission is adopting graywater flow rates based on the 2012 Uniform Plumbing Code. The 2012 Uniform Plumbing Code includes daily flow estimates for water saving fixtures while the 2015 International Plumbing Code only has traditional fixture daily flow estimates. The commission received comments from local agencies indicating that the allowed occupancy rates and therefore overall flow rate projections are not very conservative. The commission determined that if graywater is produced at graywater treatment works designed with a storage tank at a rate higher than the estimates, that any excess graywater will overflow to a combined sewer system. Excess graywater production will not impact the graywater treatment works flow (after the storage tank) for graywater use and the overall flow to the closed sewerage system from the facility will not be impacted.

For mulch basin systems without a storage tank, excess graywater production may have a more direct impact. A mulch basin without a storage tank, which is sized for surge events at three times the daily production volume, provides some safety factor for additional daily flow. The local implementing agencies will have the flexibility to adopt more conservative flow rates. For multi-family residential systems, this flow projection design criteria allows flexibility if site specific flow information is available. The residential flow values are intended for circumstances where site specific fixture information is unknown.

C. General graywater treatment works design criteria

The commission is adopting general design criteria for all graywater treatment works including: component sizing requirements, a graywater diversion valve, no bypass lines around the treatment works, and labeling. Treatment works components must be sized to treat the anticipated peak flow rate. For example: an improperly sized filter upstream of a storage tank may result in graywater backing up into the building's plumbing system. The diversion valve is a critical component for the graywater user to allow graywater to be sent to the closed sewerage system during non-irrigation periods, divert graywater when cleaning the tank, divert graywater when hazardous chemical are being used in the building, etc. The diversion valve is intended to direct graywater prior to the graywater treatment works to a closed sewerage system. No bypass lines around the graywater treatment works prior to use is allowed. The graywater lines must also be clearly distinguished to guarantee that the graywater piping is not mistaken for potable water

piping. This requirement is intended to be consistent with the anticipated Colorado Plumbing Code requirements but will apply to all graywater piping, including piping outside the structure.

This regulation is consistent with the requirements for onsite wastewater treatment facilities with respect to: the impact of a graywater system on the onsite wastewater treatment facility sizing, floodplain, and floodway requirements. The onsite wastewater treatment system must be sized for the potentially full wastewater treatment flow from the facility in the event that future property owners elect to discontinue use of the graywater treatment works.

The commission determined that a storage tank is required for all graywater treatment works, except for properly sized mulch basin systems. Tanks equalize flow surges and minimize water quality variations through the day. Tanks also allow graywater application to be controlled to ensure agronomic rate control. If excess graywater is produced (over the agronomic rate), the excess graywater will be sent to the closed sewerage system via the overflow line rather than being disposed of in the subsurface irrigation system. Tanks can be used as a collection reservoir for a pressurized graywater distribution system which will allow for equal distribution of graywater throughout graywater piping. For indoor tanks, the Colorado Plumbing code may be more restrictive than the requirements in this regulation, but the design criteria adopted here set minimum standards for water quality needs. The required tank appurtenances are important design features necessary for maintaining the required control measures. Design criteria were included for tank materials, access openings, vents, overflow lines, drains, tank foundation, and signage. A minimum tank volume of 50 gallons was adopted based on the 2012 Uniform Plumbing Code. Outdoor tanks must be protected from direct sunlight to limit biological growth prior to use of stored water.

Some graywater treatment works will produce backwash waste streams. The backwash waste stream must be properly contained or disposed. An example of a graywater treatment works with a produced wastewater stream would be a filter with a backwash process. Any wastewater from the treatment process must be sent to an appropriate disposal location such as a closed sewerage system or an approved Underground Injection Control well.

Graywater treatment works must be located within the confines of the legal property boundary and not within an easement.

D. Additional design criteria for Categories A and B

In order to ensure the integrity of the irrigation system, the commission is requiring a filter. The filter must be located between the treatment system and the irrigation distribution system to inhibit failure of the soil or emitter systems by particulate clogging. A 60 mesh filter was determined to be the appropriate minimum size for protection of the irrigation system. However, the irrigation system manufacturer may recommend smaller filter sizes based on the selected graywater irrigation system components. Local governments can be more stringent and require designers to follow the manufacturer’s recommendations. Prefiltration is not required but is recommended to reduce maintenance on the 60 mesh filter. The filter must be located between the tank and the irrigation area. To prevent pump failure, the filter must be located after the pump and not on the suction side of the pump.

For mulch basin systems, the commission’s aim was to not require a filter and to allow for simple graywater systems. It is anticipated that the mulch and underlying soil will act similar to a trickling filter and will provide some treatment of graywater that is not used by the flora.

E. Back up potable water system requirements for Categories A, B, C, and D

The commission is adopting different cross-connection control requirements for a graywater system served by a public water system (as defined in Regulation #11) than for graywater systems served by a non-public water system. The commission believes that installation of control devices is critical at all graywater treatment works with potable water connections. However, the commission does not want to require annual device testing for non-public water system users and customers (e.g., a single family house on an individual private well) that would not be required under the commission's existing regulations. The cross connection control requirements for public water systems are well defined in Regulation #11 and therefore this regulation does not repeat the associated requirements. For urinal and toilet flushing users, potable water supply is required for sanitary purposes since toilets and urinals must have a water supply at all times. For subsurface irrigation users, a potable water supply is optional.

F. Signage requirements for non-single family users

The regulation requires signage for public notification. The signage requirement is for non-single family users since the building occupants and visitors are less likely to be aware that a graywater treatment works is in use than at a single family residence. The required signage is for general notification and is a component of the required control measures. For non-single family users, signs are required at three locations: 1) point of graywater production (e.g., sink), 2) location of the graywater treatment works, and 3) point of graywater use (e.g., irrigation area, toilet). At the point of production, the purpose of the sign is to notify building occupants or visitors that the water is being reused and to ensure that the graywater is not being inadvertently contaminated. At the location of the graywater treatment works, the purpose of the sign is to notify occupants and building maintenance personnel in order to prevent accidental exposure to graywater. At the point of use, the purpose of the sign is to notify the persons using the irrigation area, toilet, or urinal.

G. ANSI/NSF 350 standard certified treatment for Category C and D systems

NSF/ANSI 350-2011 is a performance based water quality standard developed by the NSF Joint Committee on Wastewater Technology in 2011 for residential and commercial graywater treatment for indoor toilet and urinal flushing. The standard sets the minimum design, material, design and construction, and performance requirements for on-site residential and commercial graywater treatment systems. Technologies are tested under normal operating conditions and stress conditions and water quality results are verified by a third party certification agency. The standard does not specify the treatment technologies used to meet the water quality standard which gives flexibility of various treatment technologies to get certified. The commission finds that the ANSI/NSF standard meets an acceptable technology review protocol that would be certified by a third party agency to simplify the technology review process for the local jurisdictions. In addition, ANSI/NSF is a nationally recognized standard that is intended to be protective of public health and would consistently treat graywater without the need for on-going water quality testing. As the ANSI/NSF certification standard is relatively recent only a few manufacturers have gone through the certification process. The commission anticipates that as indoor graywater use becomes more accepted, more manufacturers will certify their products. Additionally, the ANSI/NSF 350 standard has on-site performance testing and evaluation protocol for commercial systems over 1,500 gallons per day. The commission anticipates some graywater users will use a third party testing agency to certify their graywater treatment works to the NSF/ANSI 350 standard.

H. Disinfection requirements for Category C and D systems

Graywater research indicates that graywater is to be expected to contain human pathogens; therefore, the commission considers the use of a potent disinfectant an essential part of a multi-barrier approach to protect public health. The use of a disinfectant is required if disinfection is not already part of the ANSI/NSF equipment. The disinfectant is to inhibit the growth of microorganisms, pathogens and viruses in the indoor graywater plumbing system. For non-single family systems, the commission is requiring a free chlorine residual of 0.2 mg/L to 4 mg/L to prevent regrowth of microorganism in the graywater distribution system. Non-single family users are expected to have a large potentially impacted population and a more complicated distribution system design than single family systems. To reduce the burden on single family users, systems that use non-chemical methods for disinfection are required to use a chlorine puck in the toilet or urinal.

To maintain a multi-barrier approach, the commission is requiring that the disinfection process be capable of producing free chlorine rather than total chlorine. The disinfection process for non-single family users must be capable of injecting enough chlorine to react with all reducing agents, ammonium, organics, etc present in the graywater (aka past the breakpoint chlorination point) and that free chlorine must be present. EPA documents indicate that chloramines (which are formed prior to breakpoint chlorination) are approximately 100 times less effective than free chlorine at inactivating pathogens such as *Giardia lamblia* or viruses. Therefore, the commission believes that free chlorine is a readily available and safe, potent disinfectant.

I. Professional Engineers for Category D systems

The professional engineer requirement for graywater treatment works with a design capacity greater than 2,000 gallons per day was determined to be necessary to ensure the protection of public health and the environment. The local jurisdiction may elect to make designer requirements more stringent in their graywater control program.

XI. Irrigation System Design Criteria

A. General design criteria basis

The irrigation design requirements in this regulation are modeled after the State of Washington's graywater regulation (Chapter 246-274 WAC). Washington requires that graywater be applied directly to the plant root zone. The requirement that irrigation systems be located four (4) inches below ground rather than two (2) inches results in less potential graywater surfacing or accidental breakage incidents. The commission wants to be in general conformance with the required set back distance requirements.

The requirements adopted for single family dispersed subsurface irrigation systems are intended to prevent undersizing of the subsurface irrigation area while making the application process straightforward. For non-single family dispersed subsurface irrigation systems and mulch basin systems, the commission's intent was to adequately size the irrigation system using the best information available including site specific soil testing.

B. Irrigation system requirements for Single Family irrigation system

The intention with the dispersed subsurface irrigation systems area sizing was to have a reasonable and simple calculation for single family systems. The commission believes this equation is the simplest and most economical method to estimate the landscape area for small graywater systems. The equation is used by other state agencies (e.g., Idaho, Washington) and

designers (e.g., Oasis Design). Furthermore, this method does not require soils testing at each single family residential site. Local jurisdictions that are not comfortable without soils testing results may elect to require the mulch bed or Category B requirements for the single family dispersed subsurface irrigation systems.

C. Irrigation system requirements for Mulch Basin and Non-Single Family dispersed subsurface irrigation systems

The commission modeled the Category B and mulch basin irrigation design requirements on the State of Washington's graywater regulation (Chapter 246-274 WAC). The Washington soil type table was merged with the soil type descriptions in Regulation #43 for ease of local implementation and for consistency between commission regulations. The soil depths are not the same as the Regulation #43 requirements since Regulation #43 is intended for onsite wastewater treatment while this regulation is intended for graywater use by flora. Although intended for use by flora, the mulch basin system design criteria recognize that disposal to groundwater may result. This recognition is the basis for requiring a site and soil evaluation for all mulch basin systems, even single family systems. The site and soil evaluation requirement aims to provide site specific conditions design parameters to allow proper design for category B and mulch basin systems.

Mulch basin design requirements in other western states were researched, and detailed mulch basin design parameters were not found. Therefore the commission's goal for the mulch basin design criteria was to have sufficient volume to adsorb graywater volume surges for graywater treatment works. For graywater treatment works that do not have a storage tank the volume requirements are to capture a surge volume three (3) times the daily flow. For graywater treatment works with a storage tank the volume requirement has a safety factor of 1.5 times the daily flow. The purposes of the other mulch basin design criteria are for proper operation and to minimize potential human exposure.

86.22 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; NOVEMBER 9, 2015 RULEMAKING, EFFECTIVE DECEMBER 30, 2015

The provisions of sections 25-8-202(1)(c) and 25-8-205(1)(g), C.R.S., provide the specific statutory authority for the Graywater Control Regulation adopted by the Water Quality Control Commission (commission). The commission has also adopted, in compliance with section 24-4-203(4), C.R.S., the following statement of basis, specific statutory authority, and purpose.

BASIS AND PURPOSE

The commission stated in the statement of basis and purpose language in section 86.21 that, "[t]he commission anticipates future reviews of this regulation to include a review for improved organization and readability." In the November 9, 2015 rulemaking the Commission reorganized Regulation #86 and, in some cases, clarified the language. These changes to Regulation #86 are not substantive and are not intended to create any new or different requirements for graywater systems. The revisions are intended to make Regulation #86 easier to understand, comply with, and implement.

In an effort to provide clarity the following revisions were made:

- Section 86.9 - clarified which of the local graywater program requirements must be adopted under an ordinance or resolution and which requirements may be adopted under rule,

- Section 86.11 - created a new independent section for graywater treatment works – flow projections in section
- Section 86.12 - reorganized the graywater treatment works design criteria in section into: subsurface irrigation graywater treatment works design criteria and indoor and urinal flushing graywater treatment works design criteria, rather than design criteria for each use category,
- Section 86.13 - moved the operation and maintenance manual requirements to section 86.13,
- Section 86.14 - moved the control measure requirements to section 86.14, and
- Minor editorial changes for clarity throughout.

86.23 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; NOVEMBER 13, 2023 RULEMAKING, EFFECTIVE JANUARY 14, 2024

The provisions of sections 25-8-202(1)(c) and 25-8-205(1)(g), C.R.S., provide the specific statutory authority for the Graywater Control Regulation adopted by the Water Quality Control Commission (commission). The commission has also adopted, in compliance with section 24-4-103(4), C.R.S., the following statement of basis, specific statutory authority, and purpose.

BASIS AND PURPOSE

Upon adoption of Regulation No. 86 in 2015, the commission anticipated future reviews to consider improved organization and readability, whether to allow additional uses and treatment works of graywater and whether to adopt a variance process. During the triennial review hearing in 2021, the commission directed the division to conduct a stakeholder process to discuss these topics in addition to other proposed items from the division. As a result, the commission adopted several changes to this regulation during the rulemaking on November 13, 2023.

I. Improved Clarification and Organization

A. Applicability for Existing Graywater Treatment Works and Regulatory Revisions

The commission added language in the Applicability section to clarify circumstances for graywater treatment works that have been approved prior to this regulatory revision ((86.6(A)(3)). The language states that if graywater treatment works were approved prior to revisions to Regulation No. 86, the treatment works remain in compliance until modifications are made, or a public or environmental health risk is identified. The commission deemed this a safe and appropriate means to avoid abrupt, burdensome costs associated with continuous upgrades or alterations as this regulation is updated. The commission's intent was to allow existing systems to persist as long as they are safe for public health and the environment.

B. Water Quality Control Commission's Control Regulations – 86.6(A)(6)

The commission deemed it necessary to include a requirement for local graywater control programs to require compliance with nutrient control regulations (5 CCR 1002-71 through 1002-75), and for notification to be provided to the basin control authorities. Regulation No. 86 does not contain phosphorus treatment techniques or standards.

C. Local Graywater Ordinances and Resolutions

The commission clarified the timeline for local agencies to update and ensure compliance of their local ordinance or resolution within 365 days from the effective date of the most recent regulation adopted by the commission. If the division determines that a local ordinance or resolution is out of compliance with Regulation No. 86, the ordinance or resolution must be revised within 180 days of written notice by the division to the local authority.

D. New Definitions

The definition of "Backflow Device" was deleted, and definitions for "Backflow Contamination Event," "Backflow Prevention Assembly" and "Backflow Prevention Method" were added to be consistent with terminology used in Colorado's Primary Drinking Water Regulation No. 11. Definitions of "ENERGY STAR" and "Integrated Water Factor" were added because these terms and data are used to calculate flow projections for laundry machines in section 86.11. A definition of "Laundry to Landscape" was added because the commission adopted this type of graywater treatment works in this regulation. In sections 86.11(A)(1)(ii)(a) and (b), the commission decided

to switch the terminology from “traditional fixtures” and “water saving fixtures” to “Non-WaterSense fixtures” and “WaterSense fixtures,” respectively, because the former terms do not have definitions in the 2012 Uniform Plumbing Code. Therefore, a definition of “WaterSense” was added. WaterSense is the Environmental Protection Agency’s (EPA’s) program for testing and labeling water efficient fixtures. It is also the intent that if the WaterSense program was replaced with another water efficiency program, the definition would still apply.

II. New Graywater Treatment Works and Use Categories

A. Laundry to Landscape Graywater Treatment Works

The commission added category A1: Laundry to Landscape graywater treatment works for single family users to employ subsurface irrigation, including mulch basins. A definition, design criteria and control measures were added. The commission found that single family units that allow for short term rental agreements (e.g. Airbnb, VRBO, etc.) should be prohibited from using Laundry to Landscape systems. The graywater effluent should be consistently produced from a permanent source to prevent the risk of potential outbreaks. Short term renters may not be aware of the control measures and other requirements in place to maintain safe Laundry to Landscape systems, and graywater effluent from multiple persons from various regions would resemble multifamily effluent that poses a greater public health risk.

B. Edible Crops

The commission added an allowance of edible crop irrigation for subsurface irrigation for single family users (includes irrigation from Laundry to Landscape systems). Irrigation of sprouts, leafy greens and root crops is prohibited. The commission’s main concern was ingestion of pathogens, and research has shown that non-spray irrigation methods on crops that grow above ground is a low risk and efficient use of graywater. Additionally, a control measure was added that edible crops irrigated with graywater treatment works must be washed with potable water prior to consumption. The commission determined that edible crop irrigation should be prohibited for non-single family users and single family units that allow for short term rentals (e.g. Airbnb, VRBO, etc.) because of the higher risk associated with pathogens in non-single family graywater effluent. As with Laundry to Landscape systems, the commission believed graywater effluent should be consistently produced from a permanent source to prevent the risk of potential outbreaks.

C. Rural Fire Protection

The commission added rural fire protection as graywater use categories D1 and D2 to provide options for jurisdictions that allow fire sprinkler systems in homes of specific sizes located in remote areas that do not have readily available storage tanks, fire hydrants or other water supplies for firefighting. While there are risks associated with using graywater for firefighting, the commission determined that protection of life from fire is a greater priority at the time of an emergency. The commission required the local city, city and county, or county to obtain agreement from the local fire district/authority prior to adopting this use in their local ordinance or resolution. It was determined that the design criteria and modified control measures for toilet and urinal flushing be used for rural fire protection to be protective of human health. Graywater must be stored in an outdoor, watertight cistern with signage to notify firefighters that graywater is contained in the cistern.

III. Adjustment to Labeling of Graywater Use Categories

The commission adopted a new labeling series for the graywater use categories shown in the table below.

Category	Use	Graywater Source(s)	End Use
A1	Laundry to Landscape	Laundry Machines	Outdoor mulch basins (single family dwelling)
B1	Single family subsurface irrigation (landscapes)	All allowed graywater sources	Outdoor subsurface irrigation and mulch basins (single family dwelling)
B2	Non-single family subsurface irrigation (landscapes)	All allowed graywater sources	Outdoor subsurface irrigation and mulch basins (non-single family)
C1	Single family indoor toilet and urinal flushing	All allowed graywater sources	Indoor toilet and urinal flushing (single family dwelling)
C2	Non-single family indoor toilet and urinal flushing	All allowed graywater sources	Indoor toilet and urinal flushing (non-single family)
D1	Single family rural fire protection	All allowed graywater sources	Indoor/outdoor firefighting, storage tank outdoor (single family dwelling)
D2	Non-single family rural fire protection	All allowed graywater sources	Indoor/outdoor firefighting, storage tank outdoor (non-single family)

IV. Updates to Flow Projections and Design Criteria

A. Laundry Machine Flow Projections

The commission decided to use the EPA's ENERGY STAR, Integrated Water Factor (IWF) for ENERGY STAR rated laundry machines. ENERGY STAR is an EPA label that is certified to meet strict standards for energy efficiency and incorporates water savings calculations into their product certifications. The IWF is a measure of water efficiency that considers gallons of water consumed per cubic foot of capacity. The IWF's can be found on EPA's website, and with the product information for ENERGY STAR laundry machines. For laundry machines that do not have an ENERGY STAR label, the flow projections previously used in Regulation No. 86 will apply. The flow rate for traditional fixtures (laundry machines that are not ENERGY STAR rated) was reduced from 15 gallons per day per occupant (gpd/occupant) to 10 gpd/occupant based on more recent and reliable laundry machine water usage data.

B. New Equation for Mulch Basin Design Criteria

The commission developed a new equation to be used to calculate landscaped area for Laundry to Landscape systems and mulch basins. The commission deleted the previous equation from Regulation No. 86 because the new equation is a simplified version that reaches the same end goal. Soil type and loading rate are uniform and reliable factors to consider whether there is sufficient graywater volume absorption for graywater subsurface irrigation.

C. New Equation for Single and Non-Single Family Dispersed Subsurface Irrigation

The commission developed a new and separate equation for sizing landscaped areas for single and non-single family dispersed subsurface irrigation systems (Graywater Use Categories: B1 and B2). Table 12-2 used for Laundry to Landscape systems is appropriate for non-pressurized irrigation systems. Dispersed subsurface irrigation systems that are not installed in mulch basins are pressurized. Table 12-3 in section 86.12(B)(3)(b)(i) is specific for pressurized irrigation systems and will result in more accurate landscaped area calculations for these types of systems.

Additionally, the commission changed the minimum depth of subsurface irrigation components from four inches to two inches (sections 86.8(45) and 86.12(B)(1)(a)). Two inches is in line with the recommendation in the 2024 Uniform Plumbing Code.

V. Certified Operator Responsibilities

The commission removed the requirement that a certified operator under the Water and Wastewater Facility Operators Certification Board be required for non-single family Graywater Treatment Works with a design capacity of 2,000 gpd or less. Most NSF 350 treatment works are relatively simple, and a designated responsible person who can operate and maintain the treatment works according to the conditions in 86.16(A) will be protective of public health. Non-single family graywater treatment works with a design capacity of greater than 2,000 gpd will continue to be required to be operated by a certified operator per Regulation No. 100.

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: 2023-00398

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

Water Quality Control Commission

on 11/13/2023

5 CCR 1002-86

REGULATION NO. 86 - GRAYWATER CONTROL REGULATION

The above-referenced rules were submitted to this office on 11/29/2023 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 30, 2023 15:07:23

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Division of Environmental Health and Sustainability

CCR number

6 CCR 1010-21

Rule title

6 CCR 1010-21 COLORADO WHOLESALE FOOD, INDUSTRIAL HEMP, AND SHELLFISH REGULATIONS 1 - eff 01/14/2024

Effective date

01/14/2024

[Publication Instructions: Replace entire current existing rule with the following new text.]

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Division of Environmental Health and Sustainability

COLORADO WHOLESALE FOOD AND SHELLFISH REGULATIONS

6 CCR 1010-21

Adopted by the Board of Health on November 15, 2023.

21.1 Authority

This regulation is adopted pursuant to Sections 25-4-1805, 25-5-420(1), and 25-5-426(1), Colorado Revised Statute (C.R.S.) and is consistent with the requirements of the State Administrative Procedure Act, Section 24-4-101, *et seq*., C.R.S.

21.2 Scope and Purpose

A. This regulation shall be applied for the protection of public health by ensuring that the premises or places wherein manufactured foods are produced, manufactured, packed, processed, prepared, treated, packaged, transported, or held for distribution are in accordance with the "Pure Food and Drug Law", Section 25-5-401 *et seq.,* C.R.S. and the "Shellfish Dealer Certification Act," Section 25-4-1801 *et seq.,* C.R.S.

B. This regulation shall govern the registration of wholesale food manufacturers. Along with the powers and duties delineated in Section 25-5-420 *et seq.*, C.R.S., Section 25-5-426(3), C.R.S., provides the department the power and duty:

1. To grant or refuse to grant registration pursuant to Section 25-5-426(4), C.R.S. and to grant or refuse to grant the annual renewal of a registration;

2. To deny, suspend, or revoke a registration;

3. To issue a certificate of free sale; and

4. To review any records of a wholesale food manufacturer or storage facility necessary to verify compliance with the provisions of Section 25-5-426, C.R.S.

C. This regulation does not apply to:

1. Retail food establishments governed by the *Colorado Retail Food Establishment Regulations*, 6 CCR 1010-2;

2. Facilities or conditions governed by the *Colorado Milk and Dairy Products Regulations*, 6 CCR 1010-4;

3. Hemp manufacturers or storage facilities, hemp products, or safe harbor hemp products as defined and regulated under authority established in 25-5-427, C.R.S.

D. Nothing in this rule shall be construed to limit the department's statutory authority under the "Pure Food and Drug Law", Section 25-5-401 *et seq*., C.R.S., the "Shellfish Dealer Certification Act," Section 25-4-1801 *et seq*., C.R.S., or Section 25-1.5-102, C.R.S**.**

21.3 Applicability

A. This rule establishes registration requirements for wholesale food manufacturers, Section 25-5-426, C.R.S., and certification requirements for wholesale food manufacturers who are also shellfish dealers, Section 25-4-1801 *et seq.*, C.R.S.

B. This rule incorporates by reference the Code of Federal Regulations addressing Food for Human Consumption and the national shellfish sanitation standards.

C. Pursuant to Section 21.6, this rule incorporates by reference 21 Code of Federal Regulations (C.F.R.) 100-111, 113-170, and 172-190 (April 1, 2017).

D. This rule establishes enforcement standards for wholesale food manufacturers pursuant to Sections 25-1.5-102(1)(c), 25-5-406 and 25-5-420, C.R.S., and enforcement standards for wholesale food manufacturers who are also shellfish dealers pursuant to Section 25-4-1810, C.R.S.

21.4 Definitions

A. For the purpose of these rules and regulations, unless otherwise specified herein:

1. Approved Source means a product from a wholesale food manufacturer or a storage facility registered with the department in accordance with Section 25-5-426, C.R.S.

2. Dealer or Shellfish Dealer means a person to whom certification is issued for the activities of shell stock shipper, shucker-packer, repacker, reshipper, depuration processor, or wet storage.

3. Wholesale food manufacturer means a facility that manufactures, produces, packs, processes, treats, packages, transports, or holds human food, including dietary supplements. These terms include storage facilities. These terms include shellfish dealers when the wholesale food manufacturer is also a shellfish dealer.

21.5 Wholesale Food Manufacturer and Shellfish Dealer Requirements

A. Wholesale food manufacturing facilities in Colorado must be registered in accordance with Section 25-5-426(4), C.R.S.

1. The owner of any wholesale food manufacturer must submit to the department an application each year for registration, along with applicable application and registration fees, using forms provided by the department.

2. The owner of any wholesale food manufacturer must also submit to the department complete and accurate information about the facility's operation and business size, using forms provided by the department.

B. Wholesale food manufacturers who are also shellfish dealers in Colorado must also be certified in accordance with Section 25-4-1805, C.R.S.

1. Any person desiring to do business as a shellfish dealer must apply for and obtain a valid certification issued by the department.

2. Shellfish dealers must report to the department, in the form and manner required by the department, any change in the information provided in the dealer's application or in such reports previously submitted, within thirty days of such change.

21.6 Incorporation by Reference

A. The department shall utilize material incorporated by reference as appropriate to assure that wholesale food manufacturers comply with the "Pure Food and Drug Law", and wholesale food manufacturers who are also shellfish dealers comply with the "Shellfish Dealer Certification Act."

1. 21 C.F.R. 100-190 (April 1, 2017) is hereby incorporated by reference into this rule. Such incorporation, however, excludes later amendments to or editions of the reference material.

2. U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration, *National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance* (2015 Revision) is hereby incorporated by reference into this rule. Such incorporation, however, excludes later amendments to or editions of the reference material.

B. Any provision included or incorporated herein by reference which conflicts with the Colorado Revised Statutes, including but not limited to Section 25-5-401 et seq., C.R.S., Section 25-4-1801 *et seq.,* C.R.S., and Section 25-1.5-102, C.R.S., shall be null and void. These regulations do not incorporate by reference:

1. 21 C.F.R. 112, *Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption*.

2. 21 C.F.R. 171, *Food Additive Petitions*.

C. The incorporated material is available for public inspection during regular business hours at:

Division of Environmental Health and Sustainability
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Pursuant to 24-4-103(12.5)(V)(b), C.R.S., the agency shall provide certified copies of the material incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline or rule.

D. The incorporated materials are available at:

https://www.ecfr.gov/cgi-bin/text-idx?SID=2029b930ffb25f468e235e6ec9a86dea&mc=true&tpl=/ecfrbrowse/Title21/21tab_02.tpl

21.7 Enforcement

A. 1. Wholesale food manufacturers that fail to submit a complete and accurate annual application for registration, or fail to remit fees in accordance with Section 25-5-426(4), C.R.S., are not considered an approved source for introduction of manufactured food into retail commerce.

2. Wholesale food manufacturers who are also shellfish dealers that fail to submit a complete and accurate annual application for certification are not considered an approved source for introduction of shellfish into retail commerce.

B. Adulterated or misbranded food, including food from unapproved sources, may be embargoed in accordance with Section 25-5-406, C.R.S.

C. In accordance with Section 25-1.5-102(1)(c), C.R.S., the department may require wholesale food manufacturers, including wholesale food manufacturers who are also shellfish dealers, to recall adulterated or misbranded food in order to investigate and control the causes of epidemic and communicable diseases affecting public health.

D. Pursuant to Sections 25-4-1810 and 25-5-420, C.R.S., if the department has reasonable cause to believe a violation of this regulation has occurred and immediate enforcement is necessary, it may issue a cease-and-desist order, which shall set forth the provisions alleged to have been violated, the facts constituting the violation, and the requirement that all violating actions immediately cease.

1. At any time after service of the order to cease and desist by certified mail, the person for whom such order was served may request a hearing to determine whether such violation has occurred. Such hearing will be conducted in conformance with the provisions of article 4 of title 24, C.R.S. and shall be determined promptly.

E. To the extent and manner authorized by law, the department may issue letters of admonition or may deny, suspend, refuse to renew, restrict, or revoke any wholesale food manufacturer registration or any shellfish dealer certification if the wholesale food manufacturer or wholesale food manufacturer who is also a shellfish dealer has:

1. Refused or failed to comply with any provision of this regulation or any lawful order of the department;

2. Had an equivalent certification or registration denied, revoked, or suspended by another authority, including but not limited to another state, or the U.S. Food and Drug Administration;

3. Refused to provide the department with reasonable, complete, and accurate information when requested by the department; or

4. Falsified any information submitted to the department.

F. In addition to the requirements herein, when the department determines that a wholesale food manufacturer who is also a shellfish dealer’s activity constitutes a major public health threat, the department shall cooperate with other authorities pursuant to Section 25-4-1805(5), C.R.S.

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: 2023-00682

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

Division of Environmental Health and Sustainability

on 11/15/2023

6 CCR 1010-21

COLORADO WHOLESALE FOOD, INDUSTRIAL HEMP, AND SHELLFISH REGULATIONS

The above-referenced rules were submitted to this office on 11/20/2023 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.

December 01, 2023 09:37:21

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Division of Environmental Health and Sustainability

CCR number

6 CCR 1010-24

Rule title

6 CCR 1010-24 Colorado Hemp Product and Safe Harbor Hemp Product Regulations 1 - eff 01/14/2024

Effective date

01/14/2024

[Publication Instructions: This is an entirely new rule.]

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Division of Environmental Health and Sustainability

COLORADO HEMP PRODUCT AND SAFE HARBOR HEMP PRODUCT REGULATIONS

6 CCR 1010-24

Adopted by the Board of Health on November 15, 2023.

24.1 Authority

This regulation is adopted pursuant to Sections 25-5-420(1) and 25-5-427, Colorado Revised Statute (C.R.S.) and is consistent with the requirements of the State Administrative Procedure Act, Section 24-4-101, *et seq.*, C.R.S.

24.2 Scope and Purpose

A. This regulation shall be applied for the protection of public health by ensuring that the premises or places wherein hemp products and safe harbor hemp products are produced, manufactured, packed, processed, prepared, treated, packaged, transported, or held for distribution are in accordance with the "Pure Food and Drug Law", Section 25-5-401 *et seq.,* C.R.S.

B. This regulation shall govern the registration of hemp product manufacturers or storage facilities and safe harbor hemp product manufacturers or storage facilities. In accordance with the powers and duties delineated in Sections 25-5-420 and 25-5-427, C.R.S., the department has the following powers and duties:

1. To grant or refuse to grant registration and to grant or refuse to grant the annual renewal of a registration;

2. To deny, suspend, or revoke a registration;

3. To issue a cease-and-desist order or clean-up order to address violations; and

4. To review any records of a hemp product manufacturers or storage facilities and safe harbor hemp product manufacturers or storage facilities necessary to verify compliance.

C. This regulation does not apply to:

1. Wholesale food manufacturers and the premises or places wherein manufactured foods are produced, manufactured, packed, processed, prepared, treated, packaged transported, or held for distribution governed by the *Colorado Wholesale Food and Shellfish Regulations*, 6 CCR 1010-21.

2. Retail food establishments governed by the *Colorado Retail Food Establishment Regulations*, 6 CCR 1010-2;

3. Facilities or conditions governed by the *Colorado Milk and Dairy Products Regulations*, 6 CCR 1010-4;

4. Entities engaged in the business of possessing, cultivating, dispensing, transferring, transporting, or testing Medical Marijuana or Retail Marijuana governed by the *Colorado Marijuana Rules*, 1 CCR 212-3;

5. The cultivation of hemp governed by the *Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act*, 8 CCR 1203-23;

6. Entities that are manufacturing intermediate or finished hemp products from the fibrous material of the plant that are not intended for human consumption. These products include, but are not limited to, cordage, paper, fuel, textiles, bedding, insulation, construction materials, compost materials, hemp crete and industrial materials; and

7. Testing performed by a certified laboratory in accordance with the *Hemp Testing Laboratory Certification*, 5 CCR 1005-5.

D. Nothing in this rule shall be construed to limit the department's statutory authority under the "Pure Food and Drug Law" at Section 25-5-401 *et seq*., C.R.S., the "Shellfish Dealer Certification Act" at Section 25-4-1801 *et seq*., C.R.S., disease investigation, reporting and control pursuant to Sections 25-1.5-101 and 25-1.5-102, C.R.S., or enforcement of "Sanitary Regulations" pursuant to Section 25-4-101 *et seq*., C.R.S**.**

24.3 Applicability

A. This rule establishes registration requirements for hemp manufacturers or storage facilities and safe harbor manufacturers or storage facilities in accordance with Section 25-5-427, C.R.S.

1. These regulatory requirements do not infer conformance with federal laws, nor do they determine the allowability of the sale and distribution of hemp products and safe harbor hemp products to other states or countries.

B. Pursuant to Section 24.6, this rule incorporates by reference 21 Code of Federal Regulations (CFR) 100-111, 113-170, and 172-190 (April 1, 2017).

C. This rule establishes enforcement standards for hemp product manufacturers or storage facilities and safe harbor hemp product manufacturers or storage facilities pursuant to Sections 25-1.5-102(1)(c), 25-5-406, 25-5-420, and 25-5-427(8)(a)-(d), C.R.S.

24.4 Definitions

A. For the purpose of these rules and regulations, unless otherwise specified herein:

1. Approved Source means:

a. Cultivated hemp from a state that has an approved United

States Department of Agriculture hemp program; or

b. A product from a wholesale food manufacturer, hemp product manufacturer or storage facility registered with the department in accordance with Section 25-5-426 or 427, C.R.S; or

c. A substance that is Generally Recognized As Safe (GRAS); or

d. Hemp products or ingredients from a state that inspects or regulates hemp products under a food safety program or equivalent criteria to ensure safety for human consumption; or

e. If the state does not inspect or regulate hemp products or ingredients, the out-of-state hemp source can demonstrate equivalency by:

(1) Maintaining an annual 21 CFR 111 or 117 certification conducted by a certified cGMP (21 CFR 117) or Dietary Supplement (21 CFR 111) auditor; and

(2) Providing evidence of this certification to the Colorado registered hemp facility; and

(3) Providing documentation to the purchaser, or by the purchaser providing documentation that all supplied hemp products or ingredients have passed testing requirements for potency, microbials, mycotoxins, pesticides, heavy metals, and residual solvents in accordance with this regulation.

2. Broad spectrum means hemp products that contain multiple cannabinoids and no more than 0.05 milligrams per gram of total THC and no more than 6.0 milligrams of total THC per container.

3. Certified laboratory means a public or private laboratory or testing facility certified by the department to perform testing on hemp and hemp products in accordance with *Hemp Testing Laboratory Certification*, 5 CCR 1005-5.

4. Certificate of Analysis means an official document issued by a certified laboratory that shows the results of scientific tests performed on a product.

5. Cosmetics means articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance or an article intended for use as a component of any such articles; except that such term does not include soap.

6. Department means the Colorado Department of Public Health and Environment.

7. Dietary supplement means a product taken by mouth that contains a dietary ingredient or a new dietary ingredient intended to supplement the diet.

8. Full spectrum means a hemp product that contains all phytochemicals naturally found in the plant, trace cannabinoids, terpenes, and essential oils, with no more than 1.75 milligrams of THC per serving and contains a ratio of cannabidiol to THC of greater than or equal to fifteen to one.

9. Generally Recognized As Safe (GRAS) means any substance that is intentionally added to food which is a food additive, that is subject to premarket review by the U.S. Food and Drug Administration (FDA), unless the substance is generally recognized, among qualified experts, as having been adequately shown to be safe under the conditions of its intended use, or unless the use of the substance is otherwise excepted from the definitions of food additive.

10. Hemp has the meaning set forth in Section 35-61-101 (7) C.R.S.

11. Hemp manufacturer or storage facility means a facility where hemp products are manufactured or stored.

12. Hemp product means a finished product that contains hemp and that:

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

    b. Is intended for human use or consumption;

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

    d. Is produced from hemp;

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

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

13. Herb means any plant with leaves, seeds, or flowers used as a flavoring, food, food additive, or dietary supplement ingredient.

14. Intoxicating cannabinoid means any of the following in an amount that exceeds the amount established by rule or, if no rule establishes the amount, in any amount:

    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;

f. Exo-tetrahydrocannabinol;

g. Metabolites of THC, including 11-hydroxy-THC, 3-hydroxy-THC, or 7-hydroxy-THC;

h. Hydrogenated forms of THC, including hexahydrocannabinol, hexahydrocannabiphorol, and hexahydrocannabihexol;

i. Synthetic forms of THC, including dronabinol;

j. Ester forms of THC, including delta-8 THC-O-acetate, delta-9 THC-O-acetate, and hexahydrocannabinol-O-acetate;

k. Tetrahydrocannabivarins, including delta-8 tetrahydrocannabivarin but excluding delta-9 tetrahydrocannabivarin (THCV);

l. Analogues or tetrahydrocannabinols with alkyl chain of four or more carbon atoms, including tetrahydrocannabiphorols, tetrahydrocannabioctyls, tetrahydrocannabihexols, or tetrahydrocannabutols; and

m. Any combination of the compounds, including hexahydrocannabiphorol-o-ester.

15. Labeling means a display of written, printed, or graphic matter upon a food, cosmetic, dietary supplement, ingredient container, or package and includes product inserts, and other promotional materials including digital communications.

16. Law means applicable local, state, and federal statutes, regulations and ordinances.

17. Manufacturing or processing, manufacturing, manufacture, process, or processing has the meaning set for in Section 25-5-426(2)(h) C.R.S.

18. Non-intoxicating cannabinoid means:

a. Full spectrum hemp extract that contains no more than 1.75 milligrams of THC per serving and contains a ratio of cannabidiol (CBD) to THC of greater than 15 to one (15:1);

b. Broad spectrum hemp extract;

c. Cannabidiol (CBD);

d. Delta-9 tetrahydrocannabivarin tetrahydrocannabivarin (THCV);

e. Cannabichromene (CBC);

f. Cannabicitran (CBT);

g. Cannabicyclol (CBL);

h. Cannabielsoin (CBE);

i. Cannabigerol (CBG);

j. Cannabidivarin (CBDV); and

k. Cannabinol (CBN);

19. Packaging means any type of container, wrapping, or other type of vessel intended to protect both food, cosmetics or dietary supplements from damage, contamination, spoilage, pest attacks, and tampering, during transport, storage, and sale.

20. Physical separation means segregation of the operations of a regulated hemp facility:

a. Including the physical separation of hemp products and safe harbor hemp products during manufacture, production, storage, and distribution; and

b. The use of separate equipment for the manufacture or production of hemp products and safe harbor hemp products.

21. Potentially intoxicating cannabinoid has the meaning set forth in Section 44-10-103(48.5), C.R.S.

22. Process Validation means the collection and evaluation of data, from the process design stage throughout production, which establishes scientific evidence that a process is capable of consistently delivering quality products.

23. Registrant means a person registered under Section 25-5-427(5), C.R.S.

24. Regulated hemp facility means:

a. A hemp manufacturer or storage facility; or

b. A safe harbor manufacturer or storage facility.

25. Safe harbor hemp product means a hemp-derived compound or cannabinoid, whether a finished product or in the process of being produced, that is permitted to be manufactured for distribution, produced for distribution, packaged for distribution, processed for distribution, prepared for distribution, treated for distribution, transported for distribution, or held for distribution in Colorado for export from Colorado but that is not permitted to be sold or distributed in Colorado.

26. Safe harbor hemp manufacturer or storage facility or safe harbor hemp facility means a facility that manufactures for distribution, produces for distribution, packages for distribution, processes for distribution, prepares for distribution, treats for distribution, transports for distribution, or holds for distribution a safe harbor hemp product.

27. Semi-synthetic cannabinoid means a substance that is created by a chemical reaction that converts one cannabinoid extracted from a cannabis plant directly into a different cannabinoid.

    a. Semi-synthetic cannabinoid includes cannabinoids, such as cannabinol (CBN) that was produced by the conversion of cannabidiol (CBD).

    b. Semi-synthetic cannabinoid does not include cannabinoids produced via decarboxylation of naturally occurring acidic forms of cannabinoids, such as tetrahydrocannabinolic acid, into the corresponding neutral cannabinoid, such as THC, through the use of heat or light, without the use of chemical reagents or catalysts, and that results in no other chemical change.

28. Serving means the size or portion customarily consumed per eating occasion, expressed in a common household measure as establish in Table 2 of 21 CFR 101.12.

29. State licensing authority has the meaning set forth in Section 44-10-103(69), C.R.S.

30. Synthetic cannabinoid means a cannabinoid-like compound that was produced by using chemical synthesis, chemical modification, or chemical conversion, including by using in-vitro biosynthesis or other bioconversion of such a method.

    a. Synthetic cannabinoid does not include:

        (1) A compound produced through the decarboxylation of naturally occurring cannabinoids from their acidic forms; or

        (2) A semi-synthetic cannabinoid.

31. Tetrahydrocannabinol (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.

    a. Tetrahydrocannabinol (THC) includes:

        (1) Delta-10 THC and its isomers;

        (2) Delta-9 THC and its isomers;

        (3) Delta-8 THC and its isomers;

        (4) Delta-7 THC and its isomers;

        (5) Delta-6a, 10a THC and its isomers; and

        (6) Exo-Tetrahydrocannabinol;

    b. Tetrahydrocannabinol or THC may also contain:

(1) Products or metabolites of any of the compounds listed in 31(a).

32. Tincture means a liquid hemp product that is packaged in a container of four fluid ounces or less, that is not a beverage or intended for drinking, and that consists of a solution:

a. Containing at least 25% non-denatured alcohol or a base of glycerin or plant-based oil;

b. Containing hemp, hemp concentrate, or hemp extract; and

c. Intended for human use.

33. Total THC means the sum of the percentage by weight of the THCAs multiplied by 0.877 plus the percentage by weight of THC [i.e., (% THCA x 0.877) + % THC].

34. Unfinished hemp product means an oil, extract, concentrate or other substance that has a total THC concentration above 0.3%, is not for consumer use or retail distribution, and will undergo further refinement or processing into a hemp product or safe harbor hemp product.

24.5 Registration Requirements

A. Regulated hemp facilities in Colorado must be registered in accordance with Section 25-5-427(5), C.R.S.

1. The owner of any regulated hemp facility must submit to the department an application each year for registration, along with applicable application and registration fees, using forms provided by the department.

2. The owner of any regulated hemp facility must also submit to the department complete and accurate information about the facility's operation and business size, using forms provided by the department.

B. In addition to the requirements in Section 24.5(A) of this rule, safe harbor hemp product manufacturers or storage facilities must demonstrate compliance with the federal current good manufacturing practices for food or dietary supplements before registering or within 12 months after the previous registration by submitting to the department:

1. Evidence of obtaining an inspection from a department-approved third-party auditor by July 1, 2024, and by July 1 of each year thereafter.

2. An attestation form, as provided by the department, by July 1 of each year that includes, but may not be limited to, the following:

a. The safe harbor hemp product manufacturer or storage facility does not export a safe harbor hemp product to a state where

the safe harbor hemp product is prohibited by state law; and

b. The safe harbor hemp product manufacturer or storage facility does not manufacture, produce, or distribute a synthetic cannabinoid; and

c. The safe harbor hemp product is manufactured, produced, tested, labeled, stored, and distributed in accordance with all applicable rules; and

d. The safe harbor hemp product manufacturer or storage facility is:

(1) Not a registered hemp manufacturer or storage facility or a registered wholesale food manufacturer or storage facility; or

(2) If the safe harbor hemp product manufacturer or storage facility is a registered wholesale food or hemp manufacturer or storage facility, each safe harbor hemp product is:

(A) Physically separated from hemp or food products during the manufacturing, production, storage, and distribution of the safe harbor hemp product; or

(B) Manufactured, produced, stored, and distributed in accordance with procedures approved by the department that ensure no cross contamination between safe harbor hemp products and hemp products or food.

24.6 Incorporation by Reference

A. The department shall utilize material incorporated by reference as appropriate to assure that regulated hemp facilities comply with the “Pure Food and Drug Law”.

1. 21 CFR 100-190 (April 1, 2017) is hereby incorporated by reference into this rule. Such incorporation, however, excludes later amendments to or editions of the reference material.

B. Any provision included or incorporated herein by reference which conflicts with the Colorado Revised Statutes, including but not limited to Section 25-5-401 *et seq*., C.R.S., and Section 25-1.5-102, C.R.S., shall be null and void. These regulations do not incorporate by reference:

1. 21 CFR 112, *Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption*.

2. 21 CFR 171, *Food Additive Petitions*.

C. The incorporated material is available for public inspection during regular business hours at:

Division of Environmental Health and Sustainability
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Pursuant to Section 24-4-103(12.5)(b), C.R.S., the agency shall provide certified copies of the material incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline or rule.

D. The incorporated materials are available at:

https://www.ecfr.gov/cgi-bin/text-idx?SID=2029b930ffb25f468e235e6ec9a86dea&mc=true&tpl=/ecfrbrowse/Title21/21tab_02.tpl

24.7 Regulated Hemp Facility Manufacturing Requirements

A. Prior to manufacturing, packaging, or distributing a regulated hemp facility must:

1. Be registered with the department;

2. Obtain any other necessary state or local licenses, permits, registrations or approvals.

3. Comply with state law, local ordinances, these governing regulations and all other applicable state and local regulations; and

4. Have conspicuously posted all applicable documentation in accordance with the law.

B. Ingredients

1. All ingredients must come from approved sources;

2. All ingredients shall be clearly identified to allow for appropriate traceability. Identification includes:

a. Name of ingredient;

b. Identifying batch or lot number from original package;

c. Date the ingredient was manufactured;

d. Date the ingredient was received at the facility; and

e. Expiration, re-test, or use-by date.

3. Spoiled, unwholesome, adulterated, vermin- or insect-infested ingredients are not allowed into the facility and shall be:

a. Removed immediately from the premises and properly disposed; or

b. Placed in a quarantine area temporarily until proper disposal if:

(1) Not practicable to remove immediately; or

(2) Required to be collected by a local or state regulatory agency for examination or testing.

C. Approved Solvents

1. The use of solvents for manufacturing within a regulated hemp facility is limited to those listed in the following table:

Acetic acid	Acetone
Anisole	1-Butanol
2-Butanol	Butyl acetate
Carbon dioxide	tert-Butylmethyl ether
Ethanol	Ethyl acetate
Ethyl ether	Ethyl formate
Formic acid	Heptane
Isobutyl acetate	Isopropyl acetate
Methanol	3-Methyl-1-butanol
Methylene chloride	Methyl acetate
2-Methyl-1-propanol	Methylethyl ketone
Pentane	1-Pentanol
Propane	1-Propanol
2-Propanol (isopropyl alcohol)	Propyl acetate
Triethylamine	

Note: The use and storage of solvents used in regulated hemp facilities must be in compliance with all applicable local, state, and federal regulations including, but not limited to rules promulgated by the Colorado Air Quality Control Commission, Colorado Board of Health, Colorado Solid and Hazardous Waste Commission, and Colorado Water Quality Control Commission.

D. Testing

1. Analytical testing shall be performed by a certified laboratory in accordance with the department's *Hemp Testing Laboratory Certification* rules, located at 5 CCR 1005-5.

2. Any exceedance of the potency or contaminant action limits presented in this Section 24.7(D) shall be reported to the department by the regulated hemp facility within 48 hours of receipt of the confirmed analytical testing results.

    a. If a regulated hemp facility product is found to contain a contaminant at levels exceeding those permissible under this regulation, then it shall be considered to have failed contaminant testing.

    b. Notwithstanding the permissible levels established in this regulation, the department reserves the right to determine, upon good cause and reasonable grounds that a particular hemp product or safe harbor hemp product may present a risk to public health or safety, and may request additional laboratory testing to demonstrate a product does not present a risk to public health or safety.

3. All certificates of analysis provided as documentation of conformance with the established testing requirements shall be furnished from a certified hemp testing laboratory.

4. Regulated hemp facilities are responsible for ensuring the testing requirements listed in subparagraphs 24.7(D)(5) and (6) of this rule are met, and must maintain certificates of analysis on any regulated hemp products they produce or transfer to ensure safety on all lots or batches. The testing requirements contained in this regulation are the minimum required and approved testing standards.

5. THC and Other Cannabinoid Content

    a. All regulated hemp facility products must have testing results for any cannabinoid that is a known component and for any ingredient for which there is a label claim. Any unidentified peak present at more than 1.0% of the total peak area in a regulated hemp facility product will be investigated and, if determined to be an unlabeled cannabinoid, will be considered to have failed THC and other cannabinoid testing.

    b. Hemp products must have laboratory test results indicating the product is:

        (1) A broad spectrum hemp product or ingredient; or

        (2) A full spectrum product that contains no more than 1.75 milligrams of total THC and contains a ratio of cannabidiol (CBD) to THC of greater than 15 to one (15:1).

    c. Safe harbor hemp products must have test results indicating cannabinoid levels, including listing THC and other intoxicating or potentially intoxicating cannabinoid levels.

6. Contaminant Testing Requirements and Limits

    a. Microbials (Bacteria and Fungus)

Substance	Action Limits Per gram (g), unless otherwise indicated
Salmonella spp.	Absent in 25 g
Shiga-toxin producing Escherichia coli (STEC) - Bacteria	Absent in 25 g
Total coliforms	< 10^2 cfu/g
Total aerobic plate count	< 10^4 cfu/g
Total yeast and mold	< 10^3 cfu/g

b. Mycotoxins

Substance	Action Limits Parts per billion (ppb)
Aflatoxins (B1, B2, G1, and G2)	< 20 (total of B1 + B2 + G1 + G2)
Aflatoxin B1	< 5
Ochratoxin A	< 5

c. Pesticides

The following pesticides are not allowed in regulated hemp facility products and should not be detected during laboratory testing at the limits of quantification (LOQ) established or approved in accordance with the department's State Public Health Laboratory, Disease Control and Public Health Response Division's, *Hemp Testing Laboratory Certification*, 5 CCR 1005-5.

Abamectin	Acephate	Acequinocyl
Acetamiprid	Aldicarb	Allethrin
Atrazine	Azadirachtin	Azoxystrobin
Benzovindiflupyr	Bifenazate	Bifenthrin
Boscalid	Buprofezin	Carbaryl
Carbofuran	Chlorantraniliprole	Chlorphenapyr
Chlorpyrifos	Clofentezine	Clothianidin
Coumaphos	Cyantraniliprole	Cyfluthrin
Cypermethrin	Cyprodinil	Daminozide
Deltamethrin	Diazinon	Dichlorvos
Dimethoate	Dimethomorph	Dinotefuran
Diuron	Dodemorph	Endosulfan sulfate
Endosulfan-alpha	Endosulfan-beta	Ethoprophos
Etofenprox	Etoxazole	Etridiazole

Fenhexamid	Fenoxycarb	Fenpyroximate
Fensulfothion	Fenthion	Fenvalerate
Fipronil	Flonicamid	Fludioxonil
Fluopyram	Hexythiazox	Imazalil
Imidacloprid	Iprodione	Kinoprene
Kresoxim-methyl	(Lambda) Cyhalothrin	Malathion
Metalaxyl	Methiocarb	Methomyl
Methoprene	Mevinphos	MGK-264
Myclobutanil	Naled	Novaluron
Oxamyl	Paclobutrazol	Parathion-methyl
Permethrin	Phenothrin	Phosmet
Piperonyl butoxide	Pirimicarb	Prallethrin
Propiconazole	Propoxur	Pyraclostrobin
Pyrethrins	Pyridaben	Pyriproxyfen
Quintozene	Resmethrin	Spinetoram
Spinosad	Spirodiclofen	Spiromesifen
Spirotetramat	Spiroxamine	Tebuconazole
Tebufenozide	Teflubenzuron	Tetrachlorvinphos
Tetramethrin	Thiabendazole	Thiacloprid
Thiamethoxam	Thiophanate-methyl	Trifloxystrobin

d. Heavy Metals

Substance	**Action Limits** Parts per million (ppm)
Arsenic	< 1.5
Cadmium	< 0.5
Lead	< 0.5
Mercury	< 1.5

e. Residual Solvents

Substance	**Action Limits** Parts per million (ppm)
Acetic acid	< 1000
Acetone	< 1000
Anisole	< 1000

Substance	Action Limits Parts per million (ppm)
Benzene*	<2
Butanes	< 100
1-Butanol	< 1000
2-Butanol	< 1000
Butyl acetate	< 1000
tert-Butylmethyl ether	< 1000
Ethanol	< 5,000
Ethyl Acetate	< 1000
Ethyl ether	< 1000
Ethyl formate	< 1000
Formic acid	< 1000
Heptane	< 1000
Hexane*	< 10
Isobutyl acetate	< 1000
Isopropyl acetate	< 1000
Methanol	< 100
Methyl acetate	< 1000
2-Methyl-1-propanol	< 1000
Methylene chloride	<3
3-Methyl-1-butanol	< 1000
Methylethyl ketone	< 1000
Pentane	< 1000
1-Pentanol	< 1000
Propane	< 100
1-Propanol	< 1000
2-Propanol (isopropyl alcohol)	< 1000
Propyl acetate	< 1000
Toluene*	< 20
Triethylamine	< 100
Total Xylenes (m, p, o-xylenes)*	< 40
Any other solvent not permitted for	None detected

* Note: These solvents are not approved for use. Due to their possible presence in the solvents approved for use, limits have been listed here accordingly.

E. Packaging and Labeling Requirements (effective June 1, 2024)

1. Packaging shall be food-grade or GRAS

2. Labeling of safe harbor products at point of retail sale to consumer shall be in accordance with the requirements listed in 24.7(E), unless compliance with these provisions is not in conformance with the requirements of the state to which the product is being distributed.

   a. Safe harbor product labels and packaging shall include a notice that identifies that the product is approved for sale outside of Colorado.

3. Labeling shall be performed in accordance with 21 CFR 101, subparts A–G and the department’s labeling requirements for hemp products, which include:

   a. All information appearing on the principal display panel or the information panel must appear prominently and conspicuously, but in no case may the letters and numbers be less than one-sixteenth inch (1/16”) in height unless the regulated hemp facility product meet the exemption pursuant to section 24.7(10).

   b. Product Identity Statement which indicates the common or usual name of the ingredient;

      (1) Product Identity Statement must appear on the principal display panel in bold type;

   c. Net Weight Statement placed as a distinct item parallel to the base of the package in the bottom third of the principal display panel.

   d. Identify on the principal display panel or the information panel that the product is produced from hemp, then sequentially:

      (1) If applicable, identify as broad spectrum product;

      (2) If applicable, identify as full spectrum product;

      (3) Identify additional isolated cannabinoids;

      (4) Identify additional ingredients, in descending order of predominance by weight.

   e. Identify, in milligrams, the total THC content per serving, total THC content per individual product package, and the ratio of cannabidiol (CBD) to THC per serving in the ingredient list or directly below the ingredient list in bold type;

      (1) If a serving contains more than 1.25 mg of total THC, and less than a 20:1 CBD to THC ratio, labeling that indicates individuals must be 21 years or older to purchase on the principal display panel.

   f. Any major food allergens, milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, sesame, wheat and soybeans shall be clearly identified and listed separately.

   g. For hemp products, the serving and number of servings per product package in accordance with Table 2, 21 CFR 101.12.

   h. Manufacturing address or a qualifying phrase which states the firm's relation to the product if contract manufactured, relabeled, or distributed by another company (e.g., “manufactured for” or “distributed by”).

i. A code or numbering system that identifies the date and location of manufacturing and packaging.

4. Qualified health claims for hemp products must follow Federal Trade Commission (FTC) and FDA regulations and guidance, including marketing materials and electronic communications.

5. A manufacturer, distributor, or seller shall not include on the label of the product, or publish or disseminate in marketing or electronic communications, any claims that the product can, or is intended to, diagnose, cure, mitigate, treat, or prevent disease.

6. Labeling of a cosmetic shall bear a warning statement whenever necessary or appropriate to prevent a health hazard that may be associated with the product. This applies to qualified claims on products as well as ingredients, aerosol products, deodorant products, foaming detergent bath products, coal tar hair dyes, sun-tanning and sunscreen products.

7. With the exception of broad spectrum products and cosmetics, the label of regulated hemp facility products that contains any tetrahydrocannabinol (THC), potentially intoxicating cannabinoids, or intoxicating cannabinoids must include a consumer notice statement that discloses the presence of the tetrahydrocannabinol (THC), potentially intoxicating or intoxicating cannabinoids, and includes at least the following notices:

    a. The potential for these products to cause a positive drug test result;

    b. The potential for these products to create impairment;

    c. Statement that these products have not been evaluated for safety or efficacy;

    d. Recommending those who are pregnant, may become pregnant, or are breastfeeding to consult with their physician about the use of these products; and

    e. Statement to keep out of the reach of children.

8. The label of regulated hemp facility products that contain cannabidiol (CBD) must include a consumer notice statement that discloses the presence of the CBD, and includes at least the following notices:

    a. Recommending those who are pregnant, may become pregnant, or are breastfeeding to consult with their physician about the use of these products; and

    b. The product may cause health problems including liver injury, damage to male reproductive health, and sedative effects that may impair your ability to drive a motor vehicle or operate machinery.

9. The consumer notice statement requirements in 24.7(E)(7) and (8) must appear on the label in at least one-sixteenth inch (1/16”) letter height and in bold type.

10. If tincture or small product package labeling requires a type size smaller than one-sixteenth inch (1/16”), the product must be accompanied by labeling, such as a marketing layer, attached to the package that appears prominently and conspicuously and meets the above type-size requirements.

11. Labels and packaging shall not be designed to appeal to children. Labels on regulated hemp facility products shall not contain any content that reasonably appears to target individuals under the age of 21, including but not limited to cartoon characters or similar images.

F. Record Keeping

1. The following records shall be maintained:

a. Certificates of analysis of ingredients;

b. Source of ingredients;

c. Batch production records including;

(1) Any records required based on department approval for co-location and use of equipment for hemp and safe harbor products in accordance with Section 24.8 of this rule.

d. Certificate of analysis of finished products;

e. Recalled product information;

f. Adverse health event reporting, including to the extent known after reasonable diligence to ascertain the information, the name and contact information of the complainant, the date the complaint was received, the nature of the complaint, the production batch or lot number, any other identifying information found on the label of the regulated hemp facility product, corrective steps taken, and recall activities completed;

g. Consumer complaints; and

h. Other records as required by the department (e.g., corrective action logs, equipment calibration records, equipment cleaning records as applicable).

2. Records shall:

a. Be kept as original records, true copies (such as photocopies, pictures, scanned copies, microfilm, microfiche, or other accurate reproductions of the original records), or electronic records;

b. Contain the actual values and observations obtained during monitoring and, as appropriate, during verification activities;

c. Be accurate, indelible, and legible;

d. Be created concurrently with performance of the activity documented;

e. Be as detailed as necessary to provide history of work performed, and include:

(1) Information adequate to identify the plant or facility (e.g., the name and, when necessary, location of the plant or facility);

(2) The date and time of the activity documented, when appropriate;

(3) The signature or initials of the person performing the activity; and

(4) The identity of the product and the lot code, when appropriate.

3. Records shall be retained:

a. At the plant or facility for at least 2 years after the date they were prepared for products identified as foods, food additives and cosmetics; and

b. For one year past the shelf life date, if shelf life dating is used, or two years beyond the date of distribution of the last batch of dietary supplements.

G. Recalls

1. Regulated hemp facilities shall establish a written recall plan in accordance with 21 CFR 117.139, *Recall Plan*, that includes procedures that describe the steps to be taken, and assigns responsibility for taking those steps, to perform the following actions as appropriate to the facility:

a. Directly notify the direct consignees of the hemp product or safe harbor hemp product being recalled, including how to return or dispose of the affected product;

b. Notify the public about any hazard presented by the product when appropriate to protect public health;

c. Conduct effectiveness checks to verify that the recall is carried out; and

d. Appropriately dispose of recalled product (e.g., through reprocessing or reworking as appropriate, or diverting to a use

that does not present a safety concern, or destroying the product).

H. Transportation

1. Transfer of hemp products shall be conducted in accordance with all applicable transportation laws.

2. Hemp products and safe harbor products shall be transported in a manner where they will be protected from adulteration, allergen cross-contact, environmental contamination and any other hazards.

I. Waste and Hazardous Waste Management

1. Waste THC shall be diluted to a concentration of less than 0.3%, converted, or disposed of in accordance with the department's Hazardous and Waste Management Division's *Marijuana and Marijuana-Related Waste Disposal* Compliance Bulletin.

2. The facility owner/operator is responsible to secure and limit access to hemp-derived THC with a concentration greater than 0.3%.

3. Waste management shall be conducted in accordance with the *Colorado Hazardous Waste Regulations* (6 CCR 1007-3) and the *Colorado Solid Waste Regulations* (6 CCR 1007-2).

24.8 Additional Requirements for Safe Harbor Manufacturers

A. Safe harbor hemp product manufacturers shall maintain records for at least two years indicating:

1. Distributor, retailer or individual that purchased the safe harbor product;

2. The state the sale was made to, and records documenting the product is not prohibited in the state where sale was completed;

3. THC or other cannabinoid concentration limits from the receiving state per serving and/or per container for each product; and

4 Labeling requirements from the receiving state that differ from those listed in this rule in section 24.7(E).

And

B. Physical separation, as defined in Section 24.4(20) of this rule, is required for a safe harbor hemp manufacturer or storage facility and a hemp product manufacturer or storage facility.

Or

C. The safe harbor hemp product registrant has received approval from the department on a process validation that demonstrates no cross contamination between products and includes all of the following:

1. A comprehensive list of products being manufactured, including a list of cannabinoids in the products;

2. Equipment used in production;

3. Production methodologies;

4. Procedures and chemicals used in cleaning equipment;

5. Test results of equipment and products for residual cannabinoids;

6. Environmental swab protocol to include frequency, location, contaminant or organism of concern, results and response to positive results;

7. Packaging materials and distribution methods;

8. Record keeping; and

9. Quality assurance program, including change management.

Or

D. The safe harbor hemp product registrant has received approval from department for production, storage and distribution procedures. Procedures must include elements listed in 24.8(C)(1-4, 6, 7, 8, 9) along with:

1. Sampling protocols for testing finished products for residual cannabinoids;

2. Product hold or release criteria; and

3. Enhanced recall response procedures that ensures notification to consumers, distributors and retailers of contaminated product and when necessary, removal of product from commerce and the market.

24.9 Offenses

A. The manufacture, production, or distribution of a hemp product or safe harbor hemp product that is also a synthetic cannabinoid is prohibited.

B. The manufacture, production, or distribution of a hemp product that contains potentially intoxicating cannabinoids is prohibited, unless specifically allowed by regulation.

C. The manufacture, production, or distribution of a hemp product that contains intoxicating cannabinoids other than THC within allowed limits is prohibited.

D. The chemical modification, conversion, or synthetic derivation of cannabinoids or other hemp-derived compounds, except for those defined as non-intoxicating cannabinoids, for use as a hemp product or ingredient in a hemp product is prohibited.

E. The manufacture of a product containing hemp that is not a cosmetic, a dietary supplement, a food, a food additive or an herb is prohibited.

F. The manufacture of a hemp product that contains more than 1.75 milligrams of total THC per serving is prohibited.

G. The manufacture of a hemp product that has a ratio of cannabidiol (CBD) to THC of less than fifteen to one (15:1) is prohibited.

H. The manufacture of a hemp product in a package with more than five servings is prohibited if the hemp product:

1. Has more than 1.25 milligrams of total THC per serving with a ratio of cannabidiol (CBD) to THC of less than fifteen to one (15:1).

2. This Section does not apply to:

a. Broad spectrum hemp products;

b. Tinctures;

c. Cosmetics; or

d. A hemp product that the United States Food and Drug Administration has determined is general recognized as safe under the “Federal Food, Drug and Cosmetic Act”, 21 U.S.C. Sec. 301 *et seq*.

I. The manufacture of a hemp product in a package with more than thirty servings is prohibited if the hemp product:

1. Has more than 1.25 milligrams of total THC per serving with a ratio of cannabidiol (CBD) to THC of less than twenty to one (20:1).

2. This Section does not apply to:

a. Broad spectrum hemp products;

b. Tinctures;

c. Cosmetics; or

d. A hemp product that the United States Food and Drug Administration has determined is general recognized as safe under the “Federal Food, Drug and Cosmetic Act”, 21 U.S.C. Sec. 301 *et seq*.

J. The distribution of a hemp product without the required age labeling and consumer notice statements as listed in Sections 24.7(E)(3)(c)(1) and 24.7(E)(7) and (8) of this rule is prohibited.

K. The distribution of a safe harbor product in Colorado or to a state that prohibits the product is prohibited.

24.10 Enforcement

A. Hemp product manufacturers or storage facilities that fail to submit a complete and accurate annual application for registration, or fail to remit fees

in accordance with Section 25-5-427(5), C.R.S., are not considered an approved source for introduction of hemp products into commerce.

B. Safe harbor hemp product manufacturers or storage facilities that fail to submit a complete and accurate annual application for registration, an attestation form, evidence of inspection from an approved third party auditor, or fail to remit fees in accordance with Section 25-5-427(5), C.R.S., are prohibited from introducing safe harbor hemp products into commerce.

C. Adulterated or misbranded hemp products and safe harbor hemp products, including hemp products and safe harbor hemp products from unapproved sources, may be embargoed in accordance with Section 25-5-406, C.R.S.

D. In accordance with Section 25-1.5-102(1)(c), C.R.S., the department may require hemp product or safe harbor hemp product manufacturers to recall adulterated or misbranded products in order to investigate and control the causes of epidemic and communicable diseases affecting public health.

E. Pursuant to Sections 25-5-420 and 25-5-427(9), C.R.S., if the department has reasonable cause to believe a violation of this regulation has occurred and immediate enforcement is necessary, it may issue a cease-and-desist order, which shall set forth the provisions alleged to have been violated, the facts constituting the violation, and the requirement that all violating actions immediately cease.

1. At any time after service of the order to cease and desist by certified mail, the person for whom such order was served may request a hearing to determine whether such violation has occurred. Such hearing will be conducted in conformance with the provisions of article 4 of title 24, C.R.S. and shall be determined promptly.

F. To the extent and manner authorized by law, the department may issue letters of admonition or may deny, suspend, refuse to renew, restrict, or revoke any regulated hemp facility the regulated hemp facility has:

1. Refused or failed to comply with any provision of this regulation, requirements of 25-5-427 C.R.S., or any lawful order of the department;

2. Refused to provide the department with reasonable, complete, and accurate information when requested by the department; or

3. Falsified records or information submitted to the department.

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: 2023-00684

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

Division of Environmental Health and Sustainability

on 11/15/2023

6 CCR 1010-24

Colorado Hemp Product and Safe Harbor Hemp Product Regulations

The above-referenced rules were submitted to this office on 11/20/2023 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.

December 01, 2023 09:39:20

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Health Facilities and Emergency Medical Services Division (1011, 1015 Series)

CCR number

6 CCR 1011-1 Chapter 05

Rule title

6 CCR 1011-1 Chapter 05 CHAPTER 5 - NURSING CARE FACILITIES 1 - eff 01/14/2024

Effective date

01/14/2024

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
Health Facilities and Emergency Medical Services Division
STANDARDS FOR HOSPITALS AND HEALTH FACILITIES CHAPTER 5 - NURSING CARE FACILITIES
6 CCR 1011-1 Chapter 5

[PUBLICATION INSTRUCTIONS: REMOVE THE CURRENT ADOPTION DATE AND EFFECTIVE DATE IN THE TITLE BLOCK AND REPLACE WITH THE FOLLOWING.]

Adopted by the Board of Health on November 15, 2023; effective January 14, 2024.

[PUBLICATION INSTRUCTIONS: INSERT THE INDEX AFTER THE TITLE BLOCK AND BEFORE SECTION 1.]

INDEX

SECTION 1 - STATUTORY AUTHORITY AND APPLICABILITY

[PUBLICATION INSTRUCTIONS: REMOVE ALL OF THE CURRENT SECTION 1.1 AND REPLACE WITH THE FOLLOWING.]

1.1 The statutory authority for the promulgation of these rules is set forth in Sections 25-1-107.5(2), 25-1-120, 25-1.5-103(1)(a), 25-1.5-118, 25-3-100.5, et seq., and 25-3-125, C.R.S.

*****

[PUBLICATION INSTRUCTIONS: REMOVE THE ENTIRE CURRENT SECTION 2 - DEFINITIONS AND REPLACE WITH THE FOLLOWING.]

SECTION 2 – DEFINITIONS

“Advance Medical Directive” means a written instruction, as defined in Section 15-18.7-102 (2), C.R.S., concerning medical treatment decisions to be made on behalf of the resident who provided the instruction in the event that the individual becomes incapacitated.

“At-Risk Elder” means a person age 70 and older.

"Caregiver" means a parent, spouse, or other family member or friend of a resident who provides care to the resident.

"Communicable Disease" has the same meaning as set forth in Section 25-1.5-102 (1)(a)(IV), C.R.S.

"Compassionate Care Visit" means a visit with a friend or family member that is necessary to meet the physical or mental needs of a resident when the resident is exhibiting signs of physical or mental distress, including:

A) End-of-life situations;

B) Adjustment support after moving to a new facility or environment;

C) Emotional support after the loss of a friend or family member;

D) Physical support after eating or drinking issues, including weight loss or dehydration; or

E) Social support after frequent crying, distress, or depression.

A compassionate care visit includes a visit from a clergy member or layperson offering religious or spiritual support or other persons requested by the resident for the purpose of a compassionate care visit.

“Department” means the Colorado Department of Public Health and Environment.

“Dementia Diseases and Related Disabilities” means a condition where mental ability declines and is severe enough to interfere with an individual’s ability to perform everyday tasks. Dementia diseases and related disabilities includes Alzheimer’s disease, mixed dementia, Lewy body dementia, vascular dementia, frontotemporal dementia, and other types of dementia, as set forth in Section 25-1-502 (2.5), C.R.S.

“Designated Facility” means an agency that has applied and been approved by the Department of Human Services to provide mental health services.

“Enforcement Activity” means the imposition of remedies such as civil money penalties; appointment of a receiver or temporary manager; conditional licensure; suspension or revocation of a license; a directed plan of correction; intermediate restrictions or conditions, including retaining a consultant, department monitoring or providing additional training to employees, owners or operators; or any other remedy provided by state or federal law or as authorized by federal survey, certification, and enforcement regulations and agreements for violations of federal or state law.

“Essential Caregiver” – Essential caregivers are not general visitors. These individuals meet an essential need for the resident by assisting with activities of daily living or positively influencing the behavior of the resident. The goal of such a designation is to help ensure residents continue to receive individualized,

person-centered care. The plan of care should include services provided by the essential caregiver.

“Governing Body” means the individual, group of individuals or corporate entity that has ultimate authority and legal responsibility for the operation of the facility.

“Medical Director” means a physician who oversees the medical care and other designated care and services in the facility.

“Non-Physician Practitioner” means a physician assistant or advance practice nurse (i.e., nurse practitioner or clinical nurse specialist).

“Nursing Care Facility” means a licensed health care entity that is planned, organized, operated and maintained to provide supportive, restorative and preventative services to persons who, due to physical and/or mental disability, require continuous or regular inpatient nursing care.

“Patient or Resident with a Disability” means an individual who needs assistance to effectively communicate with health-care facility staff, make health-care decisions, or engage in activities of daily living due to a disability such as:

A) A physical, intellectual, behavioral, or cognitive disability;

B) Deafness, being hard of hearing, or other communication barriers;

C) Blindness;

D) Autism spectrum disorder; or

E) Dementia.

“Placement Facility” means a public or private nursing care facility that has a written agreement with a designated facility to provide care and treatment to any individual undergoing mental health evaluation or treatment by the designated facility.

“Practitioner” means physician and non-physician practitioner.

“Resident Representative” means either an individual of the resident’s choice who has access to the resident’s personal health information and participates in discussions regarding the resident’s health care or a personal representative with legal standing including, but not limited to, power of attorney; medical power of attorney; legal guardian or health care surrogate appointed or designated in accordance with state law.

“Skilled Nursing Care Facility” means a nursing care facility that is federally certified by the Centers for Medicare and Medicaid Services.

“Telehealth” means a mode of delivery of health care services through telecommunication systems, including information, electronic, and communication technologies, to facilitate the assessment, diagnosis, consultation, treatment, education and care management of a resident’s health care when the resident and practitioner are located at different sites. Telehealth includes “telemedicine” as defined in Section 12-36-102.5(8), C.R.S.

****

SECTION 4 - FACILITY ADMINISTRATION

*****

[PUBLICATION INSTRUCTIONS: ADD NEW SECTION 4.4 AND RENUMBER SUBSEQUENT SECTIONS AS BELOW.]

4.4 Policies and Procedures Regarding Visitation Rights

A) Each skilled nursing facility shall have written policies and procedures regarding the visitation rights detailed in Section 25-3-125 (3)(a), C.R.S. Such policies and procedures shall:

1) Set forth the visitation rights of the resident, consistent with 42 CFR 482.13(h); 42 U.S.C. 1396r(c)(3)(C); 42 U.S.C. 1395i(c)(3)(C); 42 CFR483.10(a), (b), and (f); and Section 25-27-104, C.R.S., as applicable to the facility type;

2) Describe any restriction or limitation necessary to ensure the health and safety of residents, staff, or visitors and the reasons for such restriction or limitation;

3) Be available for inspection at the request of the Department; and

4) Be provided to residents and/or family members upon request.

4.5 FACILITY STAFFING PLAN

The facility shall have a master staffing plan for providing staffing in compliance with these regulations; distribution of personnel; replacement of personnel and forecasting future personnel needs.

4.6 POSTING DEFICIENCIES

The facility shall post conspicuously in public view either the statement of deficiencies following its most recent survey or a notice stating the location and times at which the statement can be reviewed.

4.7 WAIVERS

A facility may request waivers to these regulations pursuant to 6 CCR 1011-1, Chapter 2, General Licensure Standards, Part 5, Waiver of Regulations for Facilities and Agencies.

4.8 MANDATORY REPORTING

A) Facility personnel engaged in the admission, care or treatment of at-risk elders shall report suspected physical or sexual abuse, exploitation and caretaker neglect to law enforcement within 24 hours of observation or discovery pursuant to Section 18-6.5-108(1)(b)(v), C.R.S.

B) Facilities shall comply with all occurrence and mandatory reporting required by state and federal law including, but not limited to, notifying the Department of the following items within 24 hours of discovery by the facility.

1) Any occurrence involving neglect of a resident by failure to provide goods and services necessary to avoid the resident's physical harm or mental anguish,

2) Any occurrence involving abuse of a resident by the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish,

3) Any occurrence involving an injury of unknown source where the source of the injury could not be explained and the injury is suspicious because of the extent or location of the injury, or

4) Any occurrence involving misappropriation of a resident's property including the deliberate misplacement, exploitation or wrongful use of a resident's belongings or money without the resident's consent.

*****

SECTION 6 – PERSONNEL

*****

6.3 STAFF DEVELOPMENT

*****

[PUBLICATION INSTRUCTIONS: ADD NEW SECTION 6.3 F. AFTER CURRENT SECTION 6.3 E.]

F) Dementia Training Requirements

1) As of January 1, 2024, each nursing care facility shall ensure that its direct-care staff members meet the dementia training requirements in this sub-section 6.3 (F).

2) Definitions: For the purposes of dementia training as required by Section 25-1.5-118, C.R.S.:

a) "Direct-care Staff Member" means a staff member caring for the physical, emotional, or mental health needs of residents in a covered facility and whose work involves regular contact with residents who are living with dementia diseases and related disabilities.

b) "Equivalent Training" in this section shall mean any initial training provided by a covered facility meeting the requirements of sub-section 6.3(F)(3).

3) Initial Training: Each nursing care facility is responsible for ensuring that all direct-care staff members are trained in dementia diseases and related disabilities.

a) Initial training shall be available to direct-care staff at no cost to them.

b) The training shall be competency-based and culturally-competent and shall include a minimum of four hours of training in dementia topics including the following content:

i) Dementia diseases and related disabilities;

ii) Person-centered care of residents with dementia;

iii) Care planning for residents with dementia;

iv) Activities of daily living for residents with dementia; and

v) Dementia-related behaviors and communication.

c) For direct-care staff members already employed prior to January 1, 2024, the initial training must be completed as soon as practical, but no later than 120 days after January 1, 2024, unless an exception, as described in sub-section 6.3(F)(4)(a), applies.

d) For direct-care staff members hired or providing care on or after January 1, 2024, the initial training must be completed as soon as practical, but no later than 120 days after the start of employment or the provision of direct-care services, unless an exception, as described in sub-section 6.3(F)(4)(b), applies.

4) Exception to Initial Dementia Training Requirement

a) Any direct-care staff member who is employed by or providing direct-care services prior to the January 1, 2024, may be exempted from the facility's initial training requirement if sub-sections I and II below are met:

i) The direct-care staff member has completed an equivalent training, as defined in these rules, within the 24 months immediately preceding January 1, 2024; and

ii) The direct-care staff member can provide documentation of the satisfactory completion of the equivalent training.

iii) If the equivalent training was provided more than 24 months prior to the date of hire as allowed in this exception, the individual must document participation in both the initial training and all required continuing education subsequent to the initial training.

b) Any direct-care staff member who is hired by or begins providing direct-care services on or after January 1, 2024, may be exempted from the facility's initial training requirement if the direct-care staff member:

i) Has completed an equivalent training, as defined in these rules, either:

(A) within the 24 months immediately preceding January 1, 2024; or

(B) Within the 24 months immediately preceding the date of hire or the date of providing direct-care services;

ii) Provides documentation of the satisfactory completion of the equivalent training; and

iii) Provides documentation of all required continuing education subsequent to the initial training.

c) Such exceptions shall not negate the requirement for dementia training continuing education as described in sub-part 6.3(F)(5).

5) Dementia Training: Continuing Education

a) After completing the required initial training, all direct-care staff members shall have documented a minimum of two hours of continuing education on dementia topics every two years.

b) Continuing education on this topic must be available to direct-care staff members at no cost to them.

c) This continuing education shall be culturally competent, include current information provided by recognized experts, agencies, or

academic institutions, and include best practices in the treatment and care of persons living with dementia diseases and related disabilities.

6) Minimum Requirements for Individuals Conducting Dementia Training

a) Specialized training from recognized experts, agencies, or academic institutions in dementia disease;

b) Successful completion of the training being offered or other similar initial training which meets the minimum standards described herein; and

c) Two or more years of experience in working with persons living with dementia diseases and related disabilities.

[PUBLICATION INSTRUCTIONS: REMOVE THE CURRENT SECTION 6.4 AND REPLACE WITH THE FOLLOWING.]

6.4 RECORDS

A) The facility shall maintain personnel records on each employee, including an employment application that includes training and past experience, verification of credentials, references of past work experience, orientation and evidence that health status is appropriate to perform duties in the employee's job description.

B) Documentation of Initial Dementia Training and Continuing Education

1) The facility shall maintain documentation of each employee's completion of initial dementia training and continuing education. Such records shall be available for inspection by representatives of the Department.

2) Completion shall be demonstrated by a certificate, attendance roster, or other documentation.

3) Documentation shall include the number of hours of training, the date on which it was received, and the name of the instructor and/or training entity.

4) Documentation of the satisfactory completion of an equivalent training as defined in sub-section 6.3(F)(2)(b) and as required in the criteria for an exception discussed in sub-section 6.3(F)(4), shall include the information required in this sub-section 6.4(B)(2) and (3).

5) After the completion of training and upon request, such documentation shall be provided to the staff member for the purpose of employment at another covered facility. For the purpose of dementia training documentation, covered facilities shall include assisted living residences, nursing care facilities, and adult day care facilities as defined in Section 25.5-6-303(1), C.R.S.

*****

SECTION 15 RESIDENT RIGHTS

15.1 STATEMENT OF RIGHTS

*****

[PUBLICATION INSTRUCTIONS: INSERT NEW SECTION 15.1 P) AFTER CURRENT SECTION 15.1 O).]

P) Visitation Rights and Limitations on Visitation Rights

1) Each resident of a skilled nursing facility may have at least one visitor of the resident's choosing during their stay at the facility, unless restrictions or limitations under federal law or regulation, other state statute, or state or local public health order apply. This visitation right shall be exercised in accordance with the following:

a) A visitor to provide a compassionate care visit to alleviate the resident's physical or mental distress.

b) For a resident with a disability:

i) A visitor or support person, designated by the resident, orally or in writing, to support the resident during the course of their residency. The support person may visit the resident and may exercise the resident's visitation rights even when the resident is incapacitated or otherwise unable to communicate.

ii) When the resident has not otherwise designated a support person and the resident is incapacitated or otherwise unable to communicate their wishes, an individual may provide an advance medical directive designating the individual as the resident's support person or another term indicating that the individual is authorized to exercise visitation rights on behalf of the resident.

Pursuant to Section 15-18.7-102 (2) C.R.S., "(2) 'Advance medical directive' means a written instruction concerning medical treatment decisions to be made on behalf of the adult who provided the instruction in the event that he or she becomes incapacitated. An advance medical directive includes, but need not be limited to: (a) A medical durable power of attorney executed pursuant to section 15-14-506; (b) A declaration executed pursuant to the "Colorado Medical Treatment Decision Act", article 18 of this title; (c) A power of attorney granting medical treatment authority executed prior to July 1, 1992, pursuant to section 15-14-501, as it existed prior to that date; or (d) A CPR directive or declaration executed pursuant to article 18.6 of this title."

c) For a resident who is under eighteen years of age, the parent, legal guardian, or person standing in loco parentis to the resident is allowed to exercise these visitation rights pursuant to any limitations described in Section 15.1(P)(2), (3), and (4) Limitations on Visitation Rights.

2) Limitations on Visitation Rights: During a period when the risk of transmission of a communicable disease is heightened, a skilled nursing facility may:

a) Require visitors to enter the facility through a single, designated entrance;

b) Deny entrance to a visitor who has known symptoms of the communicable disease;

c) Require visitors to use medical masks, face-coverings, or other personal protective equipment while on the skilled nursing facility premises or in specific areas of the facility;

d) Require visitors to sign a document acknowledging:

i) The risks of entering the facility while the risk of transmission of a communicable disease is heightened; and

ii) That menacing and physical assaults on health-care workers and other employees of the facility will not be tolerated;

e) Require all visitors, before entering the facility, to be screened for symptoms of the communicable disease and deny entrance to any visitor who has symptoms of the communicable disease;

f) Require all visitors to the facility to be tested for the communicable disease and deny entry for those who have a positive test result; and

g) Restrict the movement of visitors within the facility, including restricting access to where immunocompromised or otherwise vulnerable populations are at greater risk of being harmed by a communicable disease.

h) If a skilled nursing facility requires that a visitor use a medical mask, face covering, or other personal protective equipment or to take a test for a communicable disease in order to visit a resident at the health-care facility, nothing in these regulations:

i) Requires the facility allow a visitor to enter, if the required equipment or test is not available due to lack of supply;

ii) Requires the facility to supply the required equipment or test to the visitor, or bear the cost of the equipment for the visitor; or

iii) Precludes the health-care facility from supplying the required equipment or test to the visitor.

3) Additional limitations for the visitors of a resident with a communicable disease who is isolated: the facility may impose additional restrictions including:

a) Limiting visitation to essential caregivers who are helping to provide care to the resident;

b) Limiting visitation to one caregiver at a time per resident with a communicable disease;

c) Scheduling visitors to allow for adequate time for screening, education, and training of visitors and to comply with any limits on the number of visitors permitted in the isolated area at the time; and

d) Prohibiting the presence of visitors during aerosol-generating procedures or during collection of respiratory specimens.

4) Any limitations imposed shall be consistent with applicable federal law and regulation and other state statute.

*****

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: 2023-00686

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

Health Facilities and Emergency Medical Services Division (1011, 1015 Series)

on 11/15/2023

6 CCR 1011-1 Chapter 05

CHAPTER 5 - NURSING CARE FACILITIES

The above-referenced rules were submitted to this office on 11/20/2023 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.

December 01, 2023 09:44:20

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Health Facilities and Emergency Medical Services Division (1011, 1015 Series)

CCR number

6 CCR 1011-1 Chapter 07

Rule title

6 CCR 1011-1 Chapter 07 CHAPTER 7 - ASSISTED LIVING RESIDENCES 1 - eff 01/14/2024

Effective date

01/14/2024

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health Facilities and Emergency Medical Services Division

STANDARDS FOR HOSPITALS AND HEALTH FACILITIES

CHAPTER 7 - ASSISTED LIVING RESIDENCES

6 CCR 1011-1 Chapter 7

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

(Publication Instructions: Replace the existing adoption and effective days, Table of Contents, and Parts 1 and 2 with the following.)

Adopted by the Board of Health on November 15, 2023. Effective January 14, 2024.

TABLE OF CONTENTS

PART 1 – STATUTORY AUTHORITY AND APPLICABILITY

1.1 Authority to establish minimum standards through regulation and to administer and enforce such regulations is provided by Sections 25-1.5-103, 25-1.5-118, 25-3-125, 25-27-101, and 25-27-104, C.R.S.

1.2 Assisted living residences, as defined herein, shall comply with all applicable federal and state statutes and regulations including, but not limited to, the following:

(A) This Chapter 7;

(B) 6 CCR 1011-1, Chapter 2, General Licensure Standards;

(C) 6 CCR 1011-1, Chapter 24, Medication Administration Regulations, and Sections 25-1.5-301 through 25-1.5-303 C.R.S, pertaining to medication administration;

(D) 6 CCR 1010-2, Colorado Retail Food Establishment Regulations, pertaining to food safety, for residences licensed for 20 or more beds;

(E) 6 CCR 1009-1, Epidemic and Communicable Disease Control;

(F) 6 CCR 1007-2, Part 1, Regulations Pertaining to Solid Waste Disposal Sites and Facilities, Section 13, Medical Waste; and

(G) 6 CCR 1007-3, Part 262, Standards Applicable to Generators of Hazardous Waste.

PART 2 – DEFINITIONS

For purposes of this chapter, the following definitions shall apply, unless the context requires otherwise:

2.1 “Abuse” means any of the following acts or omissions:

(A) The non-accidental infliction of bodily injury, serious bodily injury or death,

(B) Confinement or restraint that is unreasonable under generally accepted caretaking standards, or

(C) Subjection to sexual conduct or contact that is classified as a crime.

2.2 “Administrator” means a person who is responsible for the overall operation, daily administration, management and maintenance of the assisted living residence. The term “administrator” is synonymous with “operator” as that term is used in Title 25, Article 27, Part 1. The term “administrator” includes individuals appointed as an interim administrator in accordance with Part 4.5(A) unless otherwise indicated.

2.3 “Activities of daily living (ADLs)” means those personal functional activities required by an individual for continued well-being, health and safety. As used in this Chapter 7, activities of daily living include, but are not limited to, accompaniment, eating, dressing, grooming, bathing, personal hygiene (hair care, nail care, mouth care, positioning, shaving, skin care), mobility (ambulation, positioning, transfer), elimination (using the toilet) and respiratory care.

2.4 "Advance medical directive" means a written instruction, as defined in Section 15-18.7-102(2), C.R.S., concerning medical treatment decisions to be made on behalf of the resident who provided the instruction in the event that the individual becomes incapacitated.

2.5 "Alternative care facility" means an assisted living residence certified by the Colorado Department of Health Care Policy and Financing to receive Medicaid reimbursement for the services provided pursuant to 10 CCR 2505-10, Section 8.495.

2.6 "Appropriately skilled professional" means an individual that has the necessary qualifications and/or training to perform the medical procedures prescribed by a practitioner. This includes, but is not limited to, registered nurse, licensed practical nurse, physical therapist, occupational therapist, respiratory therapist, and dietitian.

2.7 "Assisted living residence" or "ALR" means:

(A) A residential facility that makes available to three or more adults not related to the owner of such facility, either directly or indirectly through a resident agreement with the resident, room and board and at least the following services: personal services; protective oversight; social care due to impaired capacity to live independently; and regular supervision that shall be available on a twenty-four-hour basis, but not to the extent that regular twenty-four hour medical or nursing care is required, or

(B) A Supportive Living Program residence that, in addition to the criteria specified in the above paragraph, is certified by the Colorado Department of Health Care Policy and Financing to also provide health maintenance activities, behavioral management and education, independent living skills training and other related services as set forth in the supportive living program regulations at 10 CCR 2505-10, Section 8.515.

(C) Unless otherwise indicated, the term "assisted living residence" is synonymous with the terms "health care entity," "health facility," or "facility" as used elsewhere in 6 CCR 1011-1, Standards for Hospitals and Health Facilities.

2.8 "At-risk person" means any person who is 70 years of age or older, or any person who is 18 years of age or older and meets one or more of the following criteria:

(A) Is impaired by the loss (or permanent loss of use) of a hand or foot, blindness or permanent impairment of vision sufficient to constitute virtual blindness;

(B) Is unable to walk, see, hear or speak;

(C) Is unable to breathe without mechanical assistance;

(D) Is a person with an intellectual and developmental disability as defined in Section 25.5-10-202, C.R.S.;

(E) Is a person with a mental health disorder as defined in Section 27-65-102(11.5), C.R.S.;

(F) Is mentally impaired as defined in Section 24-34-501(1.3)(b)(II), C.R.S.;

(G) Is blind as defined in Section 26-2-103(3), C.R.S.; or

(H) Is receiving care and treatment for a developmental disability under Article 10.5 of Title 27, C.R.S.

2.9 “Auxiliary aid” means any device used by persons to overcome a physical disability and includes but is not limited to a wheelchair, walker or orthopedic appliance.

2.10 “Care plan” means a written description, in lay terminology, of the functional capabilities of an individual, the individual’s need for personal assistance, service received from external providers, and the services to be provided by the facility in order to meet the individual’s needs. In order to deliver person-centered care, the care plan shall take into account the resident’s preferences and desired outcomes. “Care plan” may also mean a service plan for those facilities which are licensed to provide services specifically for the mentally ill.

2.11 "Caregiver" means a parent, spouse, or other family member or friend of a resident who provides care to the resident.

2.12 “Caretaker neglect” means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, habilitation, supervision or any other service necessary for the health or safety of an at-risk person is not secured for that person or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise, or a caretaker knowingly uses harassment, undue influence or intimidation to create a hostile or fearful environment for an at-risk person.

2.13 “Certified nurse medication aide (CNA-Med)” means a certified nurse aide who meets the qualifications specified in 3 CCR 716-1, Rule 1.19, and who is currently certified as a nurse aide with medication aide authority by the State Board of Nursing.

2.14 "Communicable disease" means the same as the definition set forth in Section 25-1.5-102(l)(a)(IV), C.R.S.

2.15 "Compassionate care visit" means a visit with a friend or family member that is necessary to meet the physical or mental needs of a resident when the resident is exhibiting signs of physical or mental distress, including:

(A) End-of-life situations;

(B) Adjustment support after moving to a new facility or environment;

(C) Emotional support after the loss of a friend or family member;

(D) Physical support after eating or drinking issues, including weight loss or dehydration; or

(E) Social support after frequent crying, distress, or depression.

A compassionate care visit includes a visit from a clergy member or layperson offering religious or spiritual support or other persons requested by the resident for the purpose of a compassionate care visit.

2.16 “Controlled substance” means any medication that is regulated and classified by the Controlled Substances Act at 21 U.S.C., §812 as being schedule II through V.

2.17 “Deficiency” means a failure to fully comply with any statutory and/or regulatory requirements applicable to a licensed assisted living residence.

2.18 “Deficiency list” means a listing of deficiency citations which contains a statement of the statute or regulation violated, and a statement of the findings, with evidence to support the deficiency.

2.19 "Dementia diseases and related disabilities" means a condition where mental ability declines and is severe enough to interfere with an individual's ability to perform everyday tasks. Dementia diseases and related disabilities includes Alzheimer's disease, mixed dementia, Lewy body dementia, vascular dementia, frontotemporal dementia, and other types of dementia.

2.20 "Department" means the Colorado Department of Public Health and Environment or its designee.

2.21 "Disproportionate share facilities" means facilities that serve a disproportionate share of low income residents as evidenced by having qualified for federal or state low income housing assistance; planning to serve low income residents with incomes at or below 80 percent of the area median income; and submitting evidence of such qualification, as required by the Department.

2.22 "Discharge" means termination of the resident agreement and the resident's permanent departure from the facility.

2.23 "Egress alert device" means a device that is affixed to a structure or worn by a resident that triggers a visual or auditory alarm when a resident leaves the building or grounds. Such devices shall only be used to assist staff in redirecting residents back into the facility when staff are alerted to a resident's departure from the facility as opposed to restricting the free movement of residents.

2.24 "Emergency contact" means one of the individuals identified on the face sheet of the resident record to be contacted in the case of an emergency.

2.25 "Essential caregiver" means a designated individual that meets an essential need for the resident by assisting with activities of daily living or positively influencing the behavior of the resident. The goal of such a designation is to help ensure residents continue to receive individualized, person-centered care when limitations on general visitors are in place. Each resident's care plan should include services provided by the essential caregiver.

2.26 "Exploitation" means an act or omission committed by a person who:

(A) Uses deception, harassment, intimidation or undue influence to permanently or temporarily deprive an at-risk person of the use, benefit or possession of anything of value;

(B) Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the at-risk person;

(C) Forces, compels, coerces or entices an at-risk person to perform services for the profit or advantage of the person or another person against the will of the at-risk person; or

(D) Misuses the property of an at-risk person in a manner that adversely affects the at-risk person's ability to receive health care, health care benefits, or to pay bills for basic needs or obligations.

2.27 "External services" means personal services and protective oversight services provided to a resident by family members or healthcare professionals who are not employees, contractors, or volunteers of the facility. External service providers include, but are not limited to, home health, hospice, private pay care providers, caregivers as defined in Part 2.11, and essential caregivers as defined in Part 2.25.

2.28 “High Medicaid utilization facility” means a facility that has no less than 35 percent of its licensed beds occupied by Medicaid enrollees as indicated by complete and accurate fiscal year claims data; and served Medicaid clients and submitted claims data for a minimum of nine (9) months of the relevant fiscal year.

2.29 “Hospice care” means a comprehensive set of services identified and coordinated by an external service provider in collaboration with the resident, family and assisted living residence to provide for the physical, psychosocial, spiritual and emotional needs of a terminally ill resident as delineated in a care plan. Hospice care services shall be available 24 hours a day, seven days a week pursuant to the requirements for hospice providers set forth in 6 CCR 1011-1, Chapter 21, Hospices.

2.30 “Interim administrator” means an individual meeting the requirements at Parts 6.3 and 6.5(A), who is appointed in accordance with Part 4.5(A) to fulfill the responsibilities of the administrator position while the assisted living residence does not have an individual in the administrator position.

2.31 “Involuntary discharge” means any discharge initiated by the assisted living residence.

2.32 “Licensee” means the person or entity to whom a license is issued by the Department pursuant to Section 25-1.5-103 (1) (a), C.R.S., to operate an assisted living residence within the definition herein provided. For the purposes of this Chapter 7, the term “licensee” is synonymous with the term “owner.”

2.33 "Local ombudsman" means the same as the definition set forth in Section 25-27-102(6.5), C.R.S.

2.34 “Medical waste” means waste that may contain disease causing organisms or chemicals that present potential health hazards such as discarded surgical gloves, sharps, blood, human tissue, prescription or over-the-counter pharmaceutical waste, and laboratory waste.

2.35 “Medication administration” means assisting a person in the ingestion, application, inhalation, or, using universal precautions, rectal or vaginal insertion of medication, including prescription drugs, according to the legibly written or printed directions of the attending physician or other authorized practitioner, or as written on the prescription label, and making a written record thereof with regard to each medication administered, including the time and the amount taken.

(A) Medication administration does not include:

(1) Medication monitoring; or

(2) Self-administration of prescription drugs or the self-injection of medication by a resident.

(B) Medication administration by a qualified medication administration person (QMAP) does not include judgement, evaluation, assessments, or injecting medication (unless otherwise authorized by law in response to an emergent situation.)

2.36 “Medication monitoring” means:

(A) Reminding the resident to take medication(s) at the time ordered by the authorized practitioner;

(B) Handing to a resident a container or package of medication that was lawfully labeled previously by an authorized practitioner for the individual resident;

(C) Visual observation of the resident to ensure compliance;

(D) Making a written record of the resident's compliance with regard to each medication, including the time taken; and

(E) Notifying the authorized practitioner if the resident refuses or is unable to comply with the practitioner's instructions regarding the medication.

2.37 "Mistreatment" means abuse, caretaker neglect, or exploitation.

2.38 "Name-based judicial record check" means a background check performed using judicial department records that includes an individual's conviction and final disposition of case records.

2.39 "Nurse" means an individual who holds a current unrestricted license to practice pursuant to Article 255 of Title 12, C.R.S., and is acting within the scope of such authority.

2.40 "Nursing services" means support for activities of daily living, the administration of medications, and the provision of treatment by a nurse in accordance with orders from the resident's practitioner.

2.41 "Owner" means the person or business entity that applies for assisted living residence licensure and/or in whose name the license is issued.

2.42 "Palliative care" means specialized medical care for people with serious illnesses. This type of care is focused on providing residents with relief from the symptoms, pain and stress of serious illness, whatever the diagnosis. The goal is to improve quality of life for both the resident and the family. Palliative care is provided by a team of physicians, nurses and other specialists who work with a resident's other health care providers to provide an extra layer of support. Palliative care is appropriate at any age and at any stage in a serious illness and can be provided together with curative treatment. Unless otherwise indicated, the term "palliative care" is synonymous with the terms "comfort care," "supportive care," and similar designations.

2.43 "Patient or resident with a disability" means an individual who needs assistance to effectively communicate with assisted living residence staff, make health-care decisions, or engage in activities of daily living due to a disability such as:

(A) A physical, intellectual, behavioral, or cognitive disability;

(B) Deafness, being hard of hearing, or other communication barriers;

(C) Blindness;

(D) Autism spectrum disorder; or

(E) Dementia.

2.44 "Personal care worker" means an individual who:

(A) Provides personal services for any resident; and

(B) Is not acting in his or her capacity as a health care professional under Articles 240, 255, 270, or 285 of Title 12 of the Colorado Revised Statutes.

2.45 "Personal services" means those services that an assisted living residence and its staff provide for each resident including, but not limited to:

(A) An environment that is sanitary and safe from physical harm,

(B) Individualized social supervision,

(C) Assistance with transportation, and

(D) Assistance with activities of daily living.

2.46 "Plan of correction" means a written plan to be submitted by an assisted living residence to the Department for approval, detailing the measures that shall be taken to correct all cited deficiencies.

2.47 "Practitioner" means a physician, physician assistant or advance practice nurse (i.e., nurse practitioner or clinical nurse specialist) who has a current, unrestricted license to practice and is acting within the scope of such authority.

2.48 "Pressure sore" (also called pressure ulcer, decubitus ulcer, bed-sore or skin breakdown) means an area of the skin or underlying tissue (muscle, bone) that is damaged due to loss of blood flow to the area. Symptoms and medical treatment of pressure sores are based upon the level of severity or "stage" of the pressure sore.

(A) Stage 1 affects only the upper layer of skin. Symptoms include pain, burning, or itching and the affected area may look or feel different from the surrounding skin.

(B) Stage 2 goes below the upper surface of the skin. Symptoms include pain, broken skin, or open wound that is swollen, warm, and/or red, and may be oozing fluid or pus.

(C) Stage 3 involves a sore that looks like a crater and may have a bad odor. It may show signs of infection such as red edges, pus, odor, heat, and/or drainage.

(D) Stage 4 is a deep, large sore. The skin may have turned black and show signs of infection such as red edges, pus, odor, heat and/or drainage. Tendons, muscles, and bone may be visible.

2.49 "Protective oversight" means guidance of a resident as required by the needs of the resident or as reasonably requested by the resident, including the following:

(A) Being aware of a resident's general whereabouts, although the resident may travel independently in the community; and

(B) Monitoring the activities of the resident while on the premises to ensure the resident's health, safety and well-being, including monitoring the resident's needs and ensuring that the resident receives the services and care necessary to protect the resident's health, safety, and well-being.

2.50 "Qualified medication administration person" or "QMAP" means an individual who passed a competency evaluation administered by the Department before July 1, 2017, or passed a competency evaluation administered by an approved training entity on or after July 1, 2017, and whose name appears on the Department's list of persons who have passed the requisite competency evaluation.

2.51 “Renovation” means the moving of walls and reconfiguring of existing floor plans. It includes the rebuilding or upgrading of major systems, including but not limited to: heating, ventilation, and electrical systems. It also means the changing of the functional operation of the space.

(A) Renovations do not include “minor alterations,” which are building construction projects which are not additions, which do not affect the structural integrity of the building, which do not change functional operation, and/or which do not add beds or capacity above what the facility is limited to under the existing license.

2.52 “Resident’s legal representative” means one of the following:

(A) The legal guardian of the resident, where proof is offered that such guardian has been duly appointed by a court of law, acting within the scope of such guardianship;

(B) An individual named as the agent in a power of attorney (POA) that authorizes the individual to act on the resident’s behalf, as enumerated in the POA;

(C) An individual selected as a proxy decision-maker pursuant to Section 15-18.5-101, C.R.S., et seq., to make medical treatment decisions. For the purposes of this regulation, the proxy decision-maker serves as the resident’s legal representative for the purposes of medical treatment decisions only; or

(D) A conservator, where proof is offered that such conservator has been duly appointed by a court of law, acting within the scope of such conservatorship.

2.53 “Restraint” means any method or device used to involuntarily limit freedom of movement including, but not limited to, bodily physical force, mechanical devices, chemicals, or confinement.

2.54 “Secure environment” means any grounds, building or part thereof, method, or device that prohibits free egress of residents. An environment is secure when the right of any resident thereof to move outside the environment during any hours is limited.

2.55 “Self-administration” means the ability of a resident to take medication independently without any assistance from another person.

2.56 “Staff” means employees and contracted individuals intended to substitute for or supplement employees who provide personal services. “Staff” does not include individuals providing external services, as defined herein.

2.57 "State long-term care ombudsman" means the same as the definition set forth in Section 25-27-102(12), C.R.S.

2.58 “Therapeutic diet” means a diet ordered by a practitioner or registered dietician as part of a treatment of disease or clinical condition, or to eliminate, decrease, or increase specific nutrients in the diet. Examples include, but are not limited to, a calorie counted diet; a specific sodium gram diet; and a cardiac diet.

2.59 “Transfer” means being able to move from one body position to another. This includes, but is not limited to, moving from a bed to a chair or standing up from a chair to grasp an auxiliary aid.

2.60 “Volunteer” means an unpaid individual providing personal services on behalf of and/or under the control of the assisted living residence. “Volunteer” does not include individuals visiting the assisted living residence for the purposes of resident engagement.

(Publication Instructions: Replace the existing Part 3.3 with the following.)

3.3 Each owner or applicant shall request a criminal history record check.

(A) If an owner or applicant for an initial assisted living residence license has lived in Colorado for more than three (3) years at the time of the initial application, said individual shall request from the Colorado Bureau of Investigation (CBI) a state fingerprint-based record check with notification of future arrests.

(B) If an owner or applicant for an initial assisted living residence license has lived in Colorado for three (3) years or less at the time of the initial application, said individual shall:

(1) Request from the Colorado Bureau of Investigation (CBI) a state fingerprint-based criminal history record check with notification of future arrests; and

(2) Obtain a name-based criminal history report for each additional state in which the applicant has lived for the past three years, conducted by the respective states' bureaus of investigation or equivalent state-level law enforcement agency or other name-based report as determined by the Department.

(C) The cost of obtaining such information shall be borne by the individual or individuals who are the subject of such check.

(D) The results of the check shall be forwarded to the Department as follows:

(1) For results from CBI, the information shall be forwarded by CBI to the Department.

(2) For equivalent agencies in other states, the information shall be forwarded by the agency to the Department if authorized by such state. If such authorization does not exist, the results shall be forwarded to the Department by the individual.

(E) When the results of a fingerprint-based criminal history record check of an applicant reveal a record of arrest without a disposition, the applicant shall submit to a name-based judicial record check.

(Publication Instructions: Replace the existing Parts 3.10 through 3.18 with the following, add 3.19.)

3.10 Other License Fees

(A) A facility applying for a change of mailing address, shall submit a fee of $75 with the application. For purposes of this subpart, a corporate change of address for multiple facilities shall be considered one change of address.

(B) A facility applying for a change of name shall submit a fee of $75 with the application.

(C) A facility applying for an increased number of licensed beds shall submit a fee of $500 with the application.

(D) A facility applying for a change of administrator shall submit a fee of $500 with the application.

(1) If the change of administrator application is due to the appointment of an interim administrator, the facility shall pay the fee no later than 90 days after the appointment.

(a) If an administrator is appointed during the 90 days and the required change of administrator application is submitted during that time, the facility shall owe a single payment of $500.

(b) If an administrator is appointed more than 90 days after the appointment of the interim administrator, the facility shall pay separate fees for each change of administrator application.

(E) A facility seeking to open a new secure environment shall submit a fee of $1,600 with the first submission of the applicable building plans.

Fine for Lack of Administrator

3.11 Any assisted living residence found to be without an administrator or interim administrator compliant with the requirements in Part 4.5 shall be fined $1,000.

Citing Deficiencies

3.12 The level of the deficiency shall be based upon the number of sample residents affected and the level of harm, as follows:

Level A – isolated potential for harm for one or more residents.

Level B – a pattern of potential for harm for one or more residents.

Level C –isolated actual harm affecting one or more residents.

Level D –a pattern of actual harm affecting one or more residents.

Level E (Immediate Jeopardy) – actual or potential for serious injury or harm for one or more residents.

In determining the level of deficiency to be cited, potential for harm shall mean there is a reasonable expectation that the noncompliance will result in an adverse outcome.

3.13 When a Level E deficiency is cited, the assisted living residence shall immediately remove the cause of the immediate jeopardy risk and provide the Department with written evidence that the risk has been removed.

Plans of Correction

3.14 Pursuant to Section 25-27-105 (2), C.R.S., an assisted living residence shall submit a written plan detailing the measures that will be taken to correct any deficiencies.

(A) Plans of correction shall be in the format prescribed by the Department and conform to the requirements set forth in 6 CCR 1011-1, Chapter 2, Part 2.10.4(B);

(B) The Department has the discretion to approve, impose, modify, or reject a plan of correction as set forth in 6 CCR 1011-1, Chapter 2, Part 2.10.4(B).

Intermediate Restrictions or Conditions

3.15 Section 25-27-106, C.R.S., allows the Department to impose intermediate restrictions or conditions on a licensee that may include at least one of the following:

(A) Retaining a consultant to address corrective measures including deficient practice resulting from systemic failure;

(B) Monitoring by the Department for a specific period;

(C) Providing additional training to employees, owners, or operators of the residence;

(D) Complying with a directed written plan, to correct the violation; and/or

(E) Paying a civil fine not to exceed ten thousand dollars per violation; except the cap may be exceeded at the department's discretion for an egregious violation that results in death or serious injury to a resident after considering the circumstances around the violation. In determining the amount of the fine, in accordance with Section 25-27-106(4)(a), C.R.S.:

(1) The Department shall consider:

(a) The history of harm or injury at the residence;

(b) The number of injuries to residents for which the cause of the injury is unknown;

(c) The adequacy of the residence's occurrence investigations and reporting;

(d) The adequacy of the administrator's supervision of employees to ensure employees are keeping residents safe from harm or injury; and

(e) The residence's compliance with required mandatory reporting of the mistreatment of residents, in accordance with Part 13.11(A).

(2) The Department may vary the amount of the fine depending on the size of the residence, the potential for harm or injury to one or more residents, and whether there is a pattern of potential or actual harm or injury to residents. For these variations, potential for harm shall mean there is a reasonable expectation that the assisted living residence's noncompliance will result in an adverse outcome.

3.16 Intermediate restrictions or conditions may be imposed for Level A and B deficiencies when the Department finds the assisted living residence has violated statutory or regulatory requirements. The factors that may be considered include, but are not limited to, the following:

(A) The level of potential harm to a resident(s);

(B) The number of residents affected;

(C) Whether the conduct leading to the imposition of the restriction are isolated or a pattern; and

(D) The licensee's prior history of noncompliance in general, and specifically with reference to the cited deficiencies.

3.17 For all cases where the deficiency list includes Level C, D, or E deficiencies, the assisted living residence may be required to comply with one or more of the intermediate restrictions or

conditions in Part 3.15(A) through (D), and shall be assessed a civil fine in accordance with Part 3.15(E), within the following ranges:

(A) For each Level C deficiency, the fine shall be between $100 and $5,000.

(B) For each Level D deficiency, the fine shall be between $500 and $7,500.

(C) For each Level E deficiency that is cited based on the likelihood of serious injury, serious harm, serious impairment, or death, the fine shall be between $1,000 and $10,000.

(D) For each Level E deficiency that is cited based on actual serious injury, serious harm, serious impairment, or death, the fine shall be between $2,000 and $10,000, except that the Department may exceed $10,000 for any egregious violation(s) or ongoing pattern of egregious violations resulting in serious injury or death.

Appealing the Imposition of Intermediate Restrictions/Conditions

3.18 A licensee may appeal the imposition of an intermediate restriction or condition pursuant to procedures established by the Department and as provided by Section 25-27-106, C.R.S.

(A) Informal Review

Informal review is an administrative review process conducted by the Department that does not include an evidentiary hearing.

(1) A licensee may submit a written request for informal review of the imposition of an intermediate restriction no later than ten (10) business days after the date notice is received from the Department of the restriction or condition. If an extension of time is needed, the assisted living residence shall request an extension in writing from the Department prior to the submittal due date. An extension of time may be granted by the Department not to exceed seven (7) calendar days. Informal review may be conducted after the plan of correction has been approved.

(2) For civil fines, the licensee may request, in writing that, the informal review be conducted in person, which would allow the licensee to orally address the informal reviewer(s).

(B) Formal Review

A licensee may appeal the imposition of an intermediate restriction or condition in accordance with the Administrative Procedure Act (APA) at Section 24-4-105, C.R.S. A licensee is not required to submit to the Department's informal review before pursuing formal review under the APA.

(1) For life-threatening situations, the licensee shall implement the restriction or condition immediately upon receiving notice of the restriction or condition.

(2) For situations that are not life-threatening, the restriction or condition shall be implemented in accordance with the type of condition as set forth below:

(a) For restriction/conditions other than fines, immediately upon the expiration of the opportunity for appeal or from the date that the Department's decision is upheld after all administrative appeals have been exhausted.

(b) For fines, within 30 calendar days from the date the Department's decision is upheld after all administrative appeals have been exhausted.

Supported Living Program Oversight

3.19 An assisted living residence that is certified to participate in the Supported Living Program administered by the Department of Healthcare Policy and Financing (HCPF) shall comply with both HCPF's regulations concerning that program and the applicable portions of this chapter. The Department shall coordinate with HCPF in regulatory interpretation of both license and certification requirements to ensure that the intent of similar regulations is congruently met.

(Publication Instructions: Replace the existing Part 4.5 with the following.)

4.5 The licensee shall appoint an administrator who meets the minimum qualifications set forth in these regulations and delegate to that individual the executive authority and responsibility for the administration of the assisted living residence.

(A) If the assisted living residence does not have an administrator, the licensee shall appoint an interim administrator and delegate to that individual the executive authority and responsibility for the administration of the assisted living residence, until such time that the facility has an administrator.

(1) The licensee shall notify the department of the interim administrator appointment within 24 hours of the appointment in accordance with 6 CCR 1011-1, Chapter 2 – General Licensure, Part 2.9.6.

(2) The interim administrator shall meet the administrator qualifications in Part 6.3.

(3) The interim administrator shall meet the training requirements at Part 6.5(A).

(4) The interim administrator shall be responsible for ensuring compliance with these rules as if they were the administrator. Wherever the term "administrator" appears in these rules, the requirements also apply to interim administrators, unless otherwise indicated.

(B) In accordance with Section 25-27-106(4)(b), C.R.S., any assisted living residence found to be without an administrator or an interim administrator meeting the requirements of 4.5 shall be assessed a fine, as included in Part 3.11 of these rules.

(Publication Instructions: Replace all of the existing Part 6 with the following.)

PART 6 – ADMINISTRATOR

Criminal History and Adult Protective Services Record Checks

6.1 In order to ensure that the administrator or individual appointed as an interim administrator is of good, moral, and responsible character, the assisted living residence shall request a fingerprint-based criminal history record check with notification of future arrests for each prospective administrator prior to hire, or within 10 days of appointment for an interim administrator.

(A) If an administrator applicant has lived in Colorado for more than three (3) years at the time of application, the assisted living residence shall request from the Colorado Bureau of Investigation (CBI) a state fingerprint-based criminal history record check with notification of future arrests.

(B) If an administrator applicant has lived in Colorado for less than three (3) years at the time of application, the assisted living residence shall:

(1) Request from the CBI a state fingerprint-based criminal history record check with notification of future arrests; and

(2) Obtain a name-based criminal history report for each additional state in which the applicant has lived for the past three (3) years, conducted by the respective states' bureaus of investigation or equivalent state-level law enforcement agency or other name-based report as determined by the Department.

(C) The cost of obtaining such information shall be borne by the individual who is the subject of such check. The information shall be forwarded to the department in accordance with Part 3.3(D) of these rules.

(D) When the results of a fingerprint-based criminal history record check of an administrator applicant reveal a record of arrest without a disposition, the administrator applicant shall submit to a name-based judicial record check.

6.2 In order to ensure that the administrator or individual appointed as an interim administrator is of good, moral, and responsible character, the assisted living residence shall obtain a check of the Colorado adult protective services data system pursuant to Section 26-3.1-111, C.R.S. Based on the results of the check, the assisted living residence shall ensure it follows its policy regarding the hiring or continued service of any administrator or individual appointed as an interim administrator, as required by Part 7.4.

Qualifications

6.3 Each administrator or individual appointed as an interim administrator shall be at least 21 years of age, possess a high school diploma or equivalent, and have at least one year of experience supervising the delivery of personal care services that include activities of daily living. If the administrator or interim administrator does not have the required one year of experience supervising the delivery of personal care services including activities of daily living, they shall document they have one or more of the following:

(A) An active, unrestricted Colorado nursing home administrator license;

(B) An active, unrestricted Colorado registered nurse license plus at least six (6) months of work experience in health care during the previous ten (10)-year period;

(C) An active, unrestricted Colorado licensed practical nurse license plus at least one year of work experience in health care during the previous ten (10)-year period;

(D) A bachelor's degree with emphasis in health care or human services plus at least one year of work experience in health care during the previous ten (10)-year period;

(E) An associate's degree with emphasis in health care or human services plus at least two (2) years of work experience in health care during the previous ten (10)-year period;

(F) Thirty (30) credit hours from an accredited college or university with an emphasis in health care or human services plus three (3) years of work experience in health care during the previous ten (10)-year period;

(G) Five (5) or more years of management or supervisory work in the field of geriatrics, human services, or providing care for the physically and/or cognitively disabled during the previous ten (10)-year period; or

(H) A college degree in any field plus two (2) years of health care experience during the previous ten (10)-year period.

6.4 Each administrator or individual appointed as an interim administrator of an assisted living residence shall ensure that qualified medication administration persons (QMAPs) comply with the medication administration requirements and limitations in 6 CCR 1011-1, Chapter 24, and Sections 25-1.5-301 through 25-1.5-303, C.R.S.

Training

6.5 Each administrator shall have completed 40 hours of administrator training before assuming an administrator position. Individuals appointed as an interim administrator shall have completed 40 hours of administrator training within 30 days of appointment. Written proof regarding the successful completion of such training program shall be maintained in the administrator's personnel file. The 40 hours shall be met by one of the following:

(A) Completing an administrator training program that meets the requirements of Part 6.6, below.

(B) Completing a 30-hour administrator training program on or before December 31, 2018, and documenting an additional 10 hours of training in topics related to the assisted Living administrator's responsibilities, regulatory updates, and/or best practices before June 30, 2024.

6.6 An administrator training program shall meet all of the following requirements:

(A) The program or program components are conducted by an accredited college, university, or vocational school; or an organization, association, corporation, group, or agency with specific expertise in the provision of residential care and services; and

(B) The curriculum includes at least 40 actual hours, 20 of which shall focus on applicable state regulations. The remaining 20 hours shall provide an overview of the following topics:

(1) Business operations including, but not limited to:

(a) Budgeting,

(b) Business plan/service model,

(c) Insurance,

(d) Labor laws,

(e) Marketing, messaging and liability consequences, and

(f) Resident agreement.

(2) Daily business management including, but not limited to,

(a) Coordination with external service providers (i.e., community and support services including case management, referral agencies, mental health resources, ombudsmen, adult protective services, hospice, and home care),

(b) Ethics, and

(c) Grievance and complaint process.

(3) Physical plant

(4) Resident care including, but not limited to:

(a) Admission and discharge criteria,

(b) Behavior expression management,

(c) Care needs assessment,

(d) Fall management,

(e) Nutrition,

(f) Person-centered care,

(g) Personal versus skilled care,

(h) Quality management education,

(i) Resident rights,

(j) Sexuality and aging,

(k) Secure environment, and

(l) Medication Management.

(5) Resident psychosocial needs including, but not limited to,

(a) Cultural competency (ethnicity, race, sexual orientation),

(b) Family involvement and dynamics,

(c) Mental health care (maintaining good mental health and recognizing symptoms of poor mental health),

(d) Palliative care standards, and

(e) Resident engagement.

6.7 Competency testing shall be performed to demonstrate that the individuals trained have a comprehensive, evidence-based understanding of the regulations and topics.

Duties

6.8 The administrator, or individual appointed as an interim administrator, shall be responsible for the overall day-to-day operation of the assisted living residence, including, but not limited to:

(A) Managing the day-to-day delivery of services to ensure residents receive the care that is described in the resident agreement, the comprehensive resident assessment, and the resident care plan;

(B) Organizing and directing the assisted living residence's ongoing functions including physical maintenance;

(C) Ensuring that resident care services conform to the requirements set forth in Part 12 of this chapter;

(D) Employing, training, and supervising qualified personnel;

(E) Providing continuing education for all personnel;

(F) Establishing and maintaining a written organizational chart to ensure there are well-defined lines of responsibility and adequate supervision of all personnel;

(G) Reviewing the marketing materials and information published by an assisted living residence to ensure consistency with the services actually provided by the ALR;

(H) Managing the business and financial aspects of the assisted living residence which includes working with the licensee to ensure there is an adequate budget to provide necessary resident services;

(I) Completing, maintaining, and submitting all reports and records required by the Department;

(J) Complying with all applicable federal, state, and local laws concerning licensure and certification; ~~and~~

(K) Ensuring the assisted living residence's compliance with the involuntary discharge requirements in Section 25-27-104.3 C.R.S., and these rules; and

(L) Appointing and supervising a qualified designee who is capable of satisfactorily fulfilling the administrator's duties when the administrator is unavailable.

(1) The name and contact information for the administrator or qualified designee on duty shall always be readily available to the residents and public.

(2) The administrator or qualified designee shall always, whether on or off site, be readily accessible to staff.

(3) When a qualified designee is acting as administrator in an assisted living residence that is licensed for more than 12 beds, there shall be at least one other staff member on duty whose primary responsibility is the daily care of residents.

(Publication Instructions: Replace all of the existing Part 7 with the following.)

PART 7 – PERSONNEL

Criminal History and Adult Protective Services Record Checks

7.1 In order to ensure that staff members and volunteers are of good, moral, and responsible character, the assisted living residence shall request, prior to staff hire or volunteer on-boarding, a name-based criminal history record check for each prospective staff member and volunteer.

(A) If the applicant has lived in Colorado for more than three (3) years at the time of application, the assisted living residence shall obtain a name-based criminal history report conducted by the Colorado Bureau of Investigation (CBI).

(B) If the applicant has lived in Colorado for three years or less at the time of application, the assisted living residence shall obtain a name-based criminal history report for each state in which the applicant has lived for the past three years, conducted by the respective states' bureaus of investigation or equivalent state-level law enforcement agency or other name-based report as determined by the Department.

(C) The cost of obtaining such information shall be borne by the assisted living residence, the contract staffing agency or the individual who is the subject of such check, as appropriate.

7.2 In order to ensure that staff members and volunteers are of good, moral, and responsible character, the assisted living residence shall obtain a check of the Colorado adult protective services data system pursuant to Section 26-3.1-111, C.R.S. Based on the results of the check, the assisted living residence shall ensure it follows its policy regarding the hiring or continued service of any staff member or volunteer, as required by Part 7.4.

Background Check Policies and Procedures

7.3 If the assisted living residence becomes aware of information that indicates a current administrator, individual appointed as an interim administrator, staff member, or volunteer could pose a risk to the health, safety, and welfare of the residents and/or that such individual is not of good, moral, and responsible character, the assisted living residence shall request an updated criminal history and adult protective services record check for such individual from the CBI and/or other relevant law enforcement agency.

7.4 The assisted living residence shall develop and implement policies and procedures regarding the hiring or continued service of any administrator, individual appointed as an interim administrator, staff member, or volunteer whose criminal history or adult protective services records do not reveal good, moral, and responsible character or demonstrate other conduct that could pose a risk to the health, safety, or welfare of the residents.

(A) At a minimum, the assisted living residence shall consider and address the following items:

(1) The history of convictions, pleas of guilty or no contest,

(2) The nature and seriousness of the crime(s),

(3) The time that has elapsed since the convictions,

(4) Whether there are any mitigating circumstances, and

(5) The nature of the position to which the individual will be assigned.

Ability to Perform Job Functions

7.5 Each staff member and volunteer shall be physically and mentally able to adequately and safely perform all functions essential to resident care.

7.6 The assisted living residence shall select direct care staff based on such factors as the ability to read, write, carry out directions, communicate, and demonstrate competency to safely and effectively provide care and services.

7.7 The assisted living residence shall establish written policies concerning pre-employment physical evaluations and employee health. Those policies shall include, at a minimum:

(A) Tuberculin skin testing of each staff member and volunteer prior to direct contact with residents; and

(B) The imposition of work restrictions on direct care staff who are known to be affected with any illness in a communicable stage. At a minimum, such staff shall be barred from direct contact with residents or resident food.

7.8 The assisted living residence shall have policies and procedures restricting on-site access by staff or volunteers with drug or alcohol use that would adversely impact their ability to provide resident care and services.

Staff and Volunteer Orientation and Training

7.9 The assisted living residence shall ensure that each staff member and volunteer receives orientation and training, as follows:

(A) The assisted living residence shall ensure each staff member or volunteer completes an initial orientation prior to providing any care or services to a resident. Such orientation shall include, at a minimum, all of the following topics:

(1) The care and services provided by the assisted living residence;

(2) Assignment of duties and responsibilities, specific to the staff member or volunteer;

(3) Hand Hygiene and infection control;

(4) Emergency response policies and procedures, including:

(a) Recognizing emergencies,

(b) Relevant emergency contact numbers,

(c) Fire response, including facility evacuation procedures

(d) Basic first aid,

(e) Automated external defibrillator (AED) use, if applicable,

(f) Practitioner assessment, and

(g) Serious illness injury, and/or death of a resident.

(5) Reporting requirements, including occurrence reporting procedures within the facility;

(6) Resident rights;

(7) House rules;

(8) Where to immediately locate a resident's advance directive; and

(9) An overview of the assisted living residence's policies and procedures and how to access them for reference.

(B) Dementia Training Requirements

(1) As of January 1, 2024, each assisted living residence shall ensure that its direct-care staff members meet the dementia training requirements in this part 7.8(B).

(2) Definitions: For the purposes of dementia training as required by Section 25-1.5-118, C.R.S.

(a) "Direct-care staff member" means a staff member caring for the physical, emotional, or mental health needs of residents in a covered facility and whose work involves regular contact with residents who are living with dementia diseases and related disabilities.

(b) "Equivalent Training" in this sub-part shall mean any initial training provided by a covered facility meeting the requirements of this sub-part 7.8(B)(3).

(3) Initial Training: Each assisted living residence is responsible for ensuring that all direct-care staff members are trained in dementia diseases and related disabilities.

(a) Initial training shall be available to direct-care staff at no cost to them.

(b) The training shall be competency-based and culturally-competent and shall include a minimum of four hours of training in dementia topics including the following content:

(i) Dementia diseases and related disabilities;

(ii) Person-centered care of residents with dementia;

(iii) Care planning for residents with dementia;

(iv) Activities of daily living for residents with dementia; and

(v) Dementia-related behaviors and communication.

(c) For direct-care staff members already employed prior to January 1, 2024, the initial training must be completed as soon as practical, but no later than 120 days after January 1, 2024,

unless an exception, as described in sub-part 7.8(B)(4)(a), applies.

(d) For direct-care staff members hired or providing care on or after January 1, 2024, the initial training must be completed as soon as practical, but no later than 120 days after the start of employment or the provision of direct-care services, unless an exception, as described in sub-part 7.8(B)(4)(B), applies.

(4) Exception to Initial Dementia Training Requirement

(a) Any direct-care staff member who is employed by or providing direct-care services prior to the January 1, 2024, may be exempted from the residence's initial training requirement if sub-parts I and II below are met:

(i) The direct-care staff member has completed an equivalent training, as defined in these rules, within the 24 months immediately preceding January 1, 2024; and

(ii) The direct-care staff member can provide documentation of the satisfactory completion of the equivalent training; and

(iii) If the equivalent training was provided more than 24 months prior to the date of hire as allowed in this exception, the individual must document participation in both the equivalent training and all required continuing education subsequent to the initial training.

(b) Any direct-care staff member who is hired by or begins providing direct-care services on or after January 1, 2024, may be exempted from the residence's initial training requirement if the direct-care staff member:

(i) Has completed an equivalent training, as defined in these rules, either:

(A) within the 24 months immediately preceding January 1, 2024; or

(B) Within the 24 months immediately preceding the date of hire or the date of providing direct-care services; and

(ii) Provides documentation of the satisfactory completion of the initial training; and

(iii) Provides documentation of all required continuing education subsequent to the initial training.

(c) Such exceptions shall not negate the requirement for dementia training continuing education as described in sub-part 7.8(B)(5).

(5) Dementia Training: Continuing Education

(a) After completing the required initial training, all direct-care staff members shall have documented a minimum of two hours of continuing education on dementia topics every two years.

(b) Continuing education on this topic must be available to direct-care staff members at no cost to them.

(c) This continuing education shall be culturally competent; include current information provided by recognized experts, agencies, or academic institutions; and include best practices in the treatment and care of persons living with dementia diseases and related disabilities.

(6) Minimum Requirements for Individuals Conducting Dementia Training

(a) Specialized training from recognized experts, agencies, or academic institutions in dementia disease;

(b) Successful completion of the training being offered or other similar initial training which meets the minimum standards described herein; and

(c) Two or more years of experience in working with persons living with dementia diseases and related disabilities.

(C) The assisted living residence shall provide each staff member or volunteer with training relevant to their specific duties and responsibilities prior to that staff member or volunteer working independently. This training may be provided through formal instruction, self-study courses, or on-the-job training, and shall include, but is not limited to, the following topics:

(1) Overview of state regulatory oversight applicable to the assisted living residence;

(2) Person-centered care;

(3) The role of and communication with external service providers;

(4) Recognizing behavioral expression and management techniques, as appropriate for the population being served;

(5) How to effectively communicate with residents that have hearing loss, limited English proficiency, dementia, or other conditions that impair communication, as appropriate for the population being served;

(6) Training related to fall prevention and ways to monitor residents for signs of heightened fall potential such as deteriorating eyesight, unsteady gait, and increasing limitations that restrict mobility;

(7) How to safely provide lift assistance, accompaniment, and transport of residents;

(8) Maintenance of a clean, safe and healthy environment including appropriate cleaning techniques;

(9) Food safety; and

(10) Understanding the staff or volunteer’s role in end of life care including hospice and palliative care.

Personnel Policies

7.10 The assisted living residence shall develop and maintain written personnel policies, job descriptions and other requirements regarding the conditions of employment, management of staff and resident care to be provided, including, but not limited to, the following:

(A) The assisted living residence shall provide a job-specific orientation for each new staff member and volunteer before they independently provide resident services;

(B) All staff members and volunteers shall be informed of the purpose and objectives of the assisted living residence;

(C) All staff members and volunteers shall be given access to the ALR's personnel policies and the ALR shall provide evidence that each staff member and volunteer has reviewed them; and

(D) All staff members shall wear name tags or other identification that is visible to residents and visitors.

(1) The requirement for name tags may be waived if a majority of attendees at a regularly scheduled assisted living resident meeting agree to do so.

(a) The assisted living residence shall maintain documentation showing that all residents and family members were provided advance notice regarding the topic and meeting details.

(b) The decision to waive the name tag requirement shall be raised and reviewed at the assisted living resident meeting at least annually.

Personnel Files

7.11 The assisted living residence shall maintain a personnel file for each of its employees and volunteers.

7.12 Personnel files for current employees and volunteers shall be readily available onsite for Department review.

7.13 Each personnel file shall include, but not be limited to, written documentation regarding the following items:

(A) A description of the employee or volunteer duties;

(B) Date of hire or acceptance of volunteer service and date duties commenced;

(C) Orientation and training, including first aid and CPR certification, if applicable;

(D) Verification from the Department of Regulatory Agencies, or other state agency, of an active license or certification, if applicable;

(E) Results of background checks and follow up, as applicable; and

(F) Tuberculin test results, if applicable.

(G) Documentation of initial dementia training and continuing education for direct-care staff members:

(1) The residence shall maintain documentation of each employee’s completion of initial dementia training and continuing education. Such

records shall be available for inspection by representatives of the Department.

(2) Completion shall be demonstrated by a certificate, attendance roster, or other documentation.

(3) Documentation shall include the number of hours of training, the date on which it was received, and the name of the instructor and/or training entity.

(4) Documentation of the satisfactory completion of an equivalent training as defined in sub-part 7.8(B)(2)(b) and as required in the criteria for an exception discussed in sub-part 7.8(B)(4), shall include the information required in this sub-part 7.12 (G)(2) and (3).

(5) After the completion of training and upon request, such documentation shall be provided to the staff member for the purpose of employment at another covered facility. For the purpose of dementia training documentation, covered facilities shall include assisted living residences, nursing care facilities, and adult day care facilities as defined in Section 25.5-6-303(1), C.R.S.

7.14 If the employee or volunteer is a qualified medication administration person, the following shall also be retained in the employee's or volunteer's personnel file:

(A) Documentation that the individual's name appears on the Department's list of individuals who have successfully completed the medication administration competency evaluation; and

(B) A signed disclosure that the individual has not had a professional medical, nursing, or pharmacy license revoked in this or any other state for reasons directly related to the administration of medications.

7.15 Personnel files shall be retained for three years following an employee's separation from employment or a volunteer's separation from service and include the reason(s) for the separation.

Personal Care Worker

7.16 The assisted living residence shall ensure that each personal care worker attends the initial orientation required in Part 7.8(A). The assisted living residence shall also require that each personal care worker receives additional orientation on the following topics before providing care and services to a resident:

(A) Personal care worker duties and responsibilities;

(B) The differences between personal services and skilled care; and

(C) Observation, reporting and documentation regarding a resident's change in functional status along with the assisted living residence's response requirements.

7.17 Orientation and training is not required for a personal care worker who is returning to an assisted living residence after a break in service of three years or less if that individual meets all of the following conditions:

(A) The personal care worker completed the assisted living residence's required orientation, training, and competency assessment at the time of initial employment;

(B) The personal care worker successfully completed the assisted living residence's required competency assessment at the time of rehire or reactivation;

(C) The personal care worker did not have performance issues directly related to resident care and services in the prior active period of employment; and

(D) All orientation, training, and personnel action documentation is retained in the personal care worker's personnel file.

7.18 The assisted living residence shall designate an administrator, nurse or other capable individual to be responsible for the oversight and supervision of each personal care worker. Such supervision shall include, but not be limited to:

(A) Being accessible to respond to personal care worker questions, and

(B) Evaluating each personal care worker at least annually.

(1) Each evaluation shall include observation of the personal care worker's performance of his or her assigned tasks.

7.19 The assisted living residence shall only allow a personal care worker to perform tasks that have a chronic, stable, predictable outcome and do not require routine nurse assessment.

7.20 The potential duties of a personal care worker range from observation and monitoring of residents to ensure their health, safety, and welfare, to companionship and personal services.

7.21 Before a personal care worker independently performs personal services for a resident, the supervisor designated by the assisted living residence shall observe and document that the worker has demonstrated his or her ability to competently perform every personal task assigned. This competency check shall be repeated each time a worker is assigned a new or additional personal care task that he or she has not previously performed.

7.22 Only appropriately skilled professionals may train personal care workers and their supervisors on specialized techniques beyond general personal care and assistance with activities of daily living as defined in these rules. (Examples include, but are not limited to, transfers requiring specialized equipment and assistance with therapeutic diets). Personal care workers and their supervisors shall be evaluated for competency before the delivery of each personal service requiring a specialized technique.

(A) Documentation regarding competency in specialized techniques shall be included in the personnel files of both personal care workers and supervisors.

(B) A registered nurse who is employed or contracted by the assisted living residence may delegate to a personal care worker in accordance with the Nursing Practice Act if the registered nurse is the supervising nurse for the personal care worker.

7.23 The assisted living residence shall ensure that each personal care worker complies with all assisted living residence policies and procedures and not allow a personal care worker to perform any functions which are outside of his or her job description, written agreements, or a resident's care plan.

(Publication Instructions: Replace existing Part 8.7 with the following.)

8.7 Each assisted living residence shall have at least one staff member onsite at all times who has current certification in cardiopulmonary resuscitation (CPR) and obstructed airway techniques from a nationally recognized organization (e.g., the American Red Cross, the American Heart Association, the National Safety Council or the American Safety and Health Institute) or a training curriculum that meets the American Heart Association's Emergency Cardiovascular Care (ECC) or International Consensus on Cardio-pulmonary Resuscitation (ILCOR) guidelines. The certification shall either be in Adult CPR or include Adult CPR in its curriculum, and shall include a skills assessment observed and evaluated by an instructor.

(Publication Instructions: Replace all of the existing Part 9 with the following.)

PART 9 – POLICIES AND PROCEDURES

9.1 The assisted living residence shall develop and at least annually review, all policies and procedures. At a minimum, the assisted living residence shall have policies and procedures that address the following items:

(A) Admission and discharge criteria in accordance with Parts 11 and 25, if applicable, including, but not limited to criteria for involuntary discharge as listed in Parts 11.11 through 11.12;

(B) Resident rights;

(C) Grievance procedure and complaint resolution, including a grievance procedure for involuntary discharge in accordance with Part 9.3;

(D) Investigation of abuse, neglect, and exploitation allegations;

(E) Investigation of injuries of known or unknown source/origin;

(F) House rules;

(G) Emergency preparedness;

(H) Fall management;

(I) Provision of lift assistance, first aid, obstructed airway technique, and cardiopulmonary resuscitation;

(J) Unanticipated illness, injury, significant change of status from baseline, or death of resident;

(K) Infection control;

(L) Practitioner assessment;

(M) Health information management;

(N) Personnel policies as required in both Part 6 and Part 7 of these rules;

(O) Staff Training;

(P) Environmental pest control;

(Q) Medication errors and medication destruction and disposal;

(R) Management of resident funds, if applicable;

(S) Policies and procedures related to secure environment, if applicable; ~~and~~

(T) Provision of palliative care in accordance with 6 CCR 1011-1, Chapter 2, Part 4.3, if applicable; and

(U) Visitation in accordance with Part 9.2.

9.2 The assisted living residence shall have written policies and procedures regarding the visitation rights detailed in Section 25-3-125(3)(a), C.R.S. Such policies and procedures shall:

(A) Set forth the visitation rights of the resident, consistent with 42 CFR 482.13(h); 42 U.S.C. 1396r(c)(3)(C); 42 U.S.C. 1395i(c)(3)(C); 42 CFR483.10(a), (b), and (f); and Section 25-27-104, C.R.S., as applicable to the facility type;

(B) Describe any restriction or limitation necessary to ensure the health and safety of residents, staff, or visitors and the reasons for such restriction or limitation;

(C) Be available for inspection at the request of the Department;

(D) Be provided to residents and/or family members upon request; and

(E) Include the right of each resident of an assisted living residence to have at least one visitor of the resident's choosing during their stay at the residence, unless restrictions or limitations under federal law or regulation, other state statute, or state or local public health order apply. This visitation right shall be exercised in accordance with the following:

(1) A visitor to provide a compassionate care visit to alleviate the resident's physical or mental distress.

(2) For a resident with a disability:

(a) A visitor or support person, designated by the resident, orally or in writing, to support the resident during the course of their residency. The support person may visit the resident and may exercise the resident's visitation rights even when the resident is incapacitated or otherwise unable to communicate.

(b) When the resident has not otherwise designated a support person and the resident is incapacitated or otherwise unable to communicate their wishes, an individual may provide an advance medical directive designating the individual as the resident's support person or another term indicating that the individual is authorized to exercise visitation rights on behalf of the resident.

Pursuant to Section 15-18.7-102(2), C.R.S., "(2) 'Advance medical directive' means a written instruction concerning medical treatment decisions to be made on behalf of the adult who provided the instruction in the event that he or she becomes incapacitated. An advance medical directive includes, but need not be limited to: (a) A medical durable

power of attorney executed pursuant to Section 15-14-506; (b) A declaration executed pursuant to the "Colorado Medical Treatment Decision Act", article 18 of this title; (c) A power of attorney granting medical treatment authority executed prior to July 1, 1992, pursuant to Section 15-14-501, as it existed prior to that date; or (d) A CPR directive or declaration executed pursuant to article 18.6 of this title."

(3) For a resident who is under eighteen years of age, the parent, legal guardian, or person standing in loco parentis to the resident is allowed to exercise these visitation rights pursuant to any limitations described in Parts 9.2(F) and (G).

(F) The policies and procedures may impose limitations on visitation rights. During a period when the risk of transmission of a communicable disease is heightened, an assisted living residence may:

(1) Require visitors to enter the residence through a single, designated entrance;

(2) Deny entrance to a visitor who has known symptoms of the communicable disease;

(3) Require visitors to use medical masks, face-coverings, or other personal protective equipment while on the assisted living residence premises or in specific areas of the residence;

(4) Require visitors to sign a document acknowledging:

(a) The risks of entering the residence while the risk of transmission of a communicable disease is heightened; and

(b) That menacing and physical assaults on health-care workers and other employees of the residence will not be tolerated;

(5) Require all visitors, before entering the residence, to be screened for symptoms of the communicable disease and deny entrance to any visitor who has symptoms of the communicable disease;

(6) Require all visitors to the residence to be tested for the communicable disease and deny entry for those who have a positive test result; and

(7) Restrict the movement of visitors within the residence, including restricting access to where immunocompromised or otherwise vulnerable populations are at greater risk of being harmed by a communicable disease.

(8) If an assisted living residence requires that a visitor use a medical mask, face covering, or other personal protective equipment or to take a test for a communicable disease in order to visit a resident at the assisted living residence, nothing in these regulations:

(a) Requires the residence allow a visitor to enter, if the required equipment or test is not available due to lack of supply;

(b) Requires the residence to supply the required equipment or test to the visitor, or bear the cost of the equipment for the visitor; or

(c) Precludes the health-care residence from supplying the required equipment or test to the visitor.

(G) The policies and procedures may impose additional limitations for the visitors of a resident with a communicable disease who is isolated. In this case, the residence may impose additional restrictions including:

(1) Limiting visitation to essential caregivers who are helping to provide care to the resident;

(2) Limiting visitation to one caregiver at a time per resident with a communicable disease;

(3) Scheduling visitors to allow for adequate time for screening, education, and training of visitors and to comply with any limits on the number of visitors permitted in the isolated area at the time; and

(4) Prohibiting the presence of visitors during aerosol-generating procedures or during collection of respiratory specimens.

(H) Any limitations imposed shall be consistent with applicable federal law and regulation and other state statute.

9.3 The assisted living residence shall have an involuntary discharge grievance policy that complies with Section 25-27-104.3, C.R.S., and includes, at a minimum:

(A) The individual designated by the assisted living residence to receive involuntary discharge grievances.

(B) The ability for any of the persons the assisted living residence is required to notify in accordance with Part 11.16 to file a grievance challenging the involuntary discharge and/or reasons for the discharge with the individual designated in subpart (A), above, within 14 calendar days after written notice of the involuntary discharge is provided by the assisted living residence.

(C) The ability for the resident, or other person allowed to file a grievance to receive assistance in preparing and filing a grievance without interference from the assisted living residence.

(D) A requirement that grievances related to involuntary discharge be submitted to the individual designated by the facility in accordance with subpart (A) as follows:

(1) In writing, or

(2) Orally submitted to the individual designated in accordance with subpart (A), above. In the case of an oral submission, the assisted living residence shall ensure the individual submitting the grievance retains proof of the oral submission through a witness or other evidence.

(a) If the grievance is orally submitted and witnessed, the assisted living residence shall ensure that the resident or other person filing the grievance has the witness's name and contact information, and shall keep that information as part of the grievance documentation.

(E) A requirement that no later than 5 business days after the submission of a grievance in accordance with subpart (D), above, the individual designated by the assisted living residence to receive involuntary discharge grievances shall provide a response to the grievance as follows:

(1) A written response shall be provided to the individuals required to receive notice in Part 11.16, the state long-term care ombudsman, and the designated local ombudsman.

(2) An oral explanation of the written response shall be provided to the resident and/or person filing the grievance, as appropriate.

(3) The written response shall include the following statement regarding the filing of an appeal:

"If the resident, or other person that submitted this grievance is dissatisfied with this response, they may file an appeal to the executive director of the Colorado Department of Public Health and Environment within 5 business days after receiving this written response. The appeal must include the original grievance, the original notice of involuntary discharge and supporting documentation given to the resident as part of that notification, and any additional information or documentation."

(F) Acknowledgement that if the resident, the individual filing the grievance, or the assisted living residence is dissatisfied with the findings and recommendations of the Department related to an appeal, they may request a hearing conducted by the Department pursuant to Section 24-4-105, C.R.S.

(G) A requirement that the assisted living residence not take any punitive or retaliatory action against a resident due to the resident filing a grievance or appeal pursuant to this Part.

(H) A requirement that the assisted living residence continue to assist with planning a discharge or transfer of the resident while the grievance or appeal to the Department is pending.

(I) A requirement that the resident be allowed to return to the assisted living residence if all of the following apply:

(1) The stated reason for the involuntary discharge in the notice of involuntary discharge provided in accordance with Part 11.17 is nonpayment of monthly services or room and board,

(2) The assisted living residence discharged the resident on or after the 31st day after the written notice of involuntary discharge was provided to the resident, and

(3) The resident substantially complied with payments due to the residence, as determined through the grievance and appeal process.

(Publication Instructions: Replace all current existing text in Part 11.2 with the following text.)

11.2 An assisted living residence shall not allow to move in any person who:

(A) Needs regular 24-hour medical or nursing care;

(B) Is incapable of self-administration of medication and the assisted living residence does not have staff who are either licensed or qualified under 6 CCR 1011-1, Chapter 24 to administer medications;

(C) Has an acute physical illness which cannot be managed through medication or prescribed therapy;

(D) Has physical limitations that restrict mobility unless compensated for by available auxiliary aids or intermittent staff assistance;

(E) Has incontinence issues that cannot be managed by the resident or staff;

(F) Is profoundly disoriented to time, person, and place with safety concerns that require a secure environment and the assisted living residence does not provide a secure environment;

(G) Has a stage 3 or 4 pressure sore and does not meet the criteria in Part 12.4;

(H) Has a history of conduct that has been disclosed to the assisted living residence that would pose a danger to the resident or others, unless the ALR reasonably believes that the conduct can be managed through therapeutic approaches; or

(I) Needs restraints, as defined herein, of any kind except as statutorily allowed for assisted living residences which are certified to provide services specifically for the mentally ill.

(1) Assisted living residences certified to provide services for the mentally ill shall have policies, procedures, and appropriate staff training regarding the use of restraint and maintain current documentation to show that less restrictive measures were, and continue to be, unsuccessful.

(Publication Instructions: Replace all current existing text in Part 11.6 with the following text.)

11.6 The written resident agreement shall specify the understanding between the parties concerning, at a minimum, the following items:

(A) Assisted living residence charges, refunds, and deposit policies;

(B) The general type of services and activities provided and not provided by the assisted living residence and those which the assisted living residence will assist the resident in obtaining;

(C) A list of specific assisted living residence services included for the agreed upon rates and charges, along with a list of all available optional services and the specified charge for each;

(D) The amount of any fee to hold a place for the resident in the assisted living residence while the resident is absent from the assisted living residence and the circumstances under which it will be charged;

(E) Responsibility for providing and maintaining bed linens, bath and hygiene supplies, room furnishings, communication devices, and auxiliary aids; and

(F) A guarantee that any security deposit will be fully reimbursed if the assisted living residence closes without giving resident(s) written notice at least thirty (30) calendar days before such closure,

(G) Reasons that the assisted living residence could pursue an involuntary discharge of the resident, as listed in Parts 11.11 and 11.12,

(Publication Instructions: Replace all existing text in Parts 11.11 through 11.17 with the following text, add Part 11.18.)

11.11 The assisted living residence shall arrange to discharge any resident who:

(A) Has an acute physical illness which cannot be managed through medication or prescribed therapy;

(B) Has physical limitations that restrict mobility, and which cannot be compensated for by available auxiliary aids or intermittent staff assistance;

(C) Has incontinence issues that cannot be managed by the resident or staff;

(D) Has a stage 3 or stage 4 pressure sore and does not meet the criteria in Part 12.4;

(E) Is profoundly disoriented to time, person, and place with safety concerns that require a secure environment, and the assisted living residence does not provide a secure environment;

(F) Exhibits conduct that poses a danger to self or others and the assisted living residence is unable to sufficiently address those issues through therapeutic approach; and/or

(G) Needs more services than can be routinely provided by the assisted living residence or an external service provider.

11.12 The assisted living residence may also discharge a resident for:

(A) Nonpayment of basic services in accordance with the resident agreement; or

(B) The resident's failure to comply with a valid, signed resident agreement.

11.13 Where a resident has demonstrated that he or she has become a danger to self or others, the assisted living residence shall promptly implement the following process pending discharge:

(A) Take all appropriate measures necessary to protect other residents;

(B) Reassess the resident to be discharged and revise his or her care plan to identify the resident's current needs and what services the assisted living residence will provide to meet those needs; and

(C) Ensure all staff are aware of any new directives placed in the care plan and are properly trained to provide supervision and actions consistent with the care plan.

11.14 The assisted living residence shall coordinate a voluntary or involuntary discharge with the resident, the resident's legal representative and/or the appropriate agency. Prior to discharging a resident because of increased care needs, the assisted living residence shall make documented efforts to meet those needs through other means.

11.15 In the event a resident is transferred to another health care entity for additional care, the assisted living residence shall arrange to evaluate the resident prior to re-admission or discharge the resident in accordance with the discharge procedures specified below.

11.16 The assisted living residence shall provide written notice of any discharge 30 calendar days in advance of discharge except in cases in which the resident requires a level of care that cannot be met by the residence or the resident has demonstrated that they are a danger to themselves or others, whereupon the assisted living residence shall provide written notification with as much advance notice as is reasonable under the circumstances prior to the removal from the residence. Such written notice shall be provided to:

(A) The resident,

(B) The resident's legal representative, and

(C) Any relative or other person the resident has designated to receive notice of a discharge, as listed on the resident's face sheet in accordance with Part 18.9(G).

11.17 Written notice of involuntary discharge must include the following:

(A) A detailed explanation of the reason or reasons for the discharge, including, at a minimum:

(1) Facts and evidence supporting each reason given by the residence, and

(2) A recounting of events leading to the involuntary discharge, including interactions with the resident over a period of time prior to the notice and actions taken to avoid discharge, specifying the timing of the events and actions.

(B) Statements conveying the following information:

(1) That the individual receiving the notice has the right to file a grievance with the residence challenging the involuntary discharge within 14 days of the written notice, regardless of whether the resident has already been removed from the assisted living residence,

(2) That if a grievance is filed, the assisted living residence must provide a response to the grievance within five business days, and

(3) If the resident or person filing the grievance is dissatisfied with the response, that the resident or person filing the grievance may appeal to the executive director of the Colorado Department of Public Health and Environment or their designee.

(C) Names and contact information, including phone numbers, physical addresses, and email addresses, for the state long-term care ombudsman, the designated local ombudsman, and the Colorado Department of Public Health and Environment.

(D) If the involuntary discharge is initiated due to a medical or physical condition resulting in a required level of care that cannot be treated with medication or services routinely provided by the residence's staff or an external service provider, the notice must also include an assessment by the resident's applicable health-care or behavioral health provider of the resident's current needs in relation to the resident's medical and physical condition.

11.18 A copy of any involuntary discharge notice shall be sent to the state long-term care ombudsman and the designated local ombudsman, within five (5) calendar days of the date that it is provided to the resident and the resident's legal representative.

(Publication Instructions: Replace all current existing text in Part 12.10 with the following text.)

12.10 Each resident care plan shall:

(A) Be developed with input from the resident and the resident's representative;

(B) Reflect the most current assessment information;

(C) Promote resident choice, mobility, independence and safety;

(D) Detail specific personal service needs and preferences along with the staff tasks necessary to meet those needs;

(E) Identify all external service providers, including essential caregivers for the purposes of the assisted living residence's visitation policy as required by Part 9.2, along with care coordination arrangements; and

(F) Identify formal, planned, and informal spontaneous engagement opportunities that match the resident's personal choices and needs.

(Publication Instructions: Replace all current existing text in Parts 13.1 through 13.2 with the following text.)

13.1 The assisted living residence shall adopt, and place in a publically visible location, a statement regarding the rights and responsibilities of its residents. The assisted living residence and staff shall observe these rights in the care, treatment, and oversight of the residents. The statement of rights shall include, at a minimum, the following items:

(A) The right to privacy and confidentiality, including:

(1) The right to have private and unrestricted communications with any person of choice;

(2) The right to private telephone calls or use of electronic communication;

(3) The right to receive mail unopened;

(4) The right to have visitors at any time; and

(5) The right to private, consensual sexual activity.

(B) The right to civil and religious liberties, including:

(1) The right to be treated with dignity and respect;

(2) The right to be free from sexual, verbal, physical or emotional abuse, humiliation, intimidation, or punishment;

(3) The right to be free from neglect;

(4) The right to live free from financial exploitation, restraint as defined in this chapter, and involuntary confinement except as allowed by the secure environment requirements of this chapter;

(5) The right to vote;

(6) The right to exercise choice in attending and participating in religious activities;

(7) The right to wear clothing of choice unless otherwise indicated in the care plan; and

(8) The right to care and services that are not conditioned or limited because of a resident's disability, sexual orientation, ethnicity, and/or personal preferences.

(C) The right to personal and community engagement, including:

(1) The right to socialize with other residents and participate in assisted living residence activities, in accordance with the applicable care plan;

(2) The right to full use of the assisted living residence common areas in compliance with written house rules;

(3) The right to participate in resident meetings, voice grievances, and recommend changes in policies and services without fear of reprisal;

(4) The right to participate in activities outside the assisted living residence and request assistance with transportation; and

(5) The right to use of the telephone including access to operator assistance for placing collect telephone calls.

(a) At least one telephone accessible to residents utilizing an auxiliary aid shall be available if the assisted living residence is occupied by one or more residents utilizing such an aid.

(D) The right to choice and personal involvement regarding care and services, including:

(1) The right to be informed and participate in decision making regarding care and services, in coordination with family members who may have different opinions;

(2) The right to be informed about and formulate advance directives;

(3) The right to freedom of choice in selecting a health care service or provider;

(4) The right to expect the cooperation of the assisted living residence in achieving the maximum degree of benefit from those services which are made available by the assisted living residence;

(a) For residents with limited English proficiency or impairments that inhibit communication, the assisted living residence shall find a way to facilitate communication of care needs.

(5) The right to make decisions and choices in the management of personal affairs, funds, and property in accordance with resident ability;

(6) The right to refuse to perform tasks requested by the assisted living residence or staff in exchange for room, board, other goods or services;

(7) The right to have advocates, including members of community organizations whose purposes include rendering assistance to the residents;

(8) The right to receive services in accordance with the resident agreement and the care plan; and

(9) The right to thirty (30) calendar days' written notice of changes in services provided by the assisted living residence including, but not limited to, involuntary change of room or changes in charges for a service. Exceptions to this notice are:

(a) Changes in the resident's medical acuity that result in a documented decline in condition and that constitute an increase in care necessary to protect the health and safety of the resident; and

(b) Requests by the resident or the family for additional services to be added to the care plan.

(10) The right to designate the individuals to be notified in cases of emergency or involuntary discharge.

(E) The right to visitation in compliance with facility policy as set forth in Part 9.2.

Ombudsman Access

13.2 In accordance with the Supporting Older Americans Act of 2020 (P.L. 116-131), and Sections 26-11.5-108 and 25-27-104(2)(d), C.R.S., an assisted living residence shall permit access to the premises and residents by the state long-term care ombudsman and the designated local ombudsman at any time during an ALR's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated.

(A) For the purposes of complying with this Part 13.2, access to residents shall include access to the assisted living residence's contact information for the resident and the resident's representative.

(Publication Instructions: Replace all current existing text in Part 13.10 with the following text.)

13.10 Each assisted living residence shall develop and implement an internal process to ensure the routine and prompt handling of grievances or complaints brought by residents, family members,

or advocates. The process for raising and addressing grievances and complaints shall be placed in a visible on-site location along with full contact information for the following agencies:

(A) The state long-term care ombudsman and local ombudsman;

(B) The Adult Protection Services of the appropriate county Department of Social Services;

(C) The advocacy services of the area's agency on aging;

(D) The Colorado Department of Public Health and Environment; and

(E) The Colorado Department of Health Care Policy and Financing, in those cases where the assisted living residence is licensed to provide services specifically for persons with intellectual and developmental disabilities.

(Publication Instructions: Replace the heading language between the existing Part 13.10 and 13.11 with the following.)

Investigation of Abuse and Neglect Allegations or Injuries of Unknown Origin

(Publication Instructions: Replace all current existing text in Parts 18.7 through 18.9(K) with the following text, add 18.9(L) .)

18.7 Each resident or legal representative of a resident shall be allowed to inspect that resident's own record in accordance with Section 25-1-801, C.R.S. Upon request, resident records shall also be made available for inspection by the state long-term care ombudsman and local ombudsman pursuant to Section 26-11.5-108, C.R.S., Department representatives and other lawfully authorized individuals.

Content

18.8 Resident records shall contain, but not be limited to, the following items:

(A) Face Sheet;

(B) Practitioner order;

(C) Individualized resident care plan;

(D) Progress notes which shall include information on resident status and wellbeing, as well as documentation regarding any out of the ordinary event or issue that affects a resident's physical, behavioral, cognitive and/or functional condition, along with the action taken by staff to address that resident's changing needs;

(1) The assisted living residence shall require staff members to document, before the end of their shift, any out of the ordinary event or issue regarding a resident that they personally observed, or was reported to them.

(E) Medication Administration Record;

(F) Documentation of on-going services provided by external service providers including, but not limited to, caregivers, essential caregivers, aides, podiatrists, physical therapists, hospice and home care services, and other practitioners, assistants, and care providers;

(G) Advance directives, if applicable, with extra copies; and

(H) Final disposition of resident including, if applicable, date, time, and circumstances of a resident's death, along with the name of the person to whom the body is released.

18.9 The face sheet shall be updated at least annually and contain the following information:

(A) Resident's full name, including maiden name, if applicable;

(B) Resident's sex, date of birth, and marital status;

(C) Resident's most recent former address;

(D) Resident's medical insurance information and Medicaid number, if applicable;

(E) Date of admission and readmission, if applicable;

(F) Name, contact information, and mailing address, if available, for family members, legal representatives, and/or other persons to be notified specifically in case of emergency;

(G) Name, contact information, and mailing address, if available, for the legal representative and all relatives or other persons the resident and/or legal representative specifically designates to receive a notice of discharge in accordance with Part 11.16;

(H) Name, address, and contact information for resident's practitioner and case manager, if applicable;

(I) Resident's primary spoken language and any issues with oral communication;

(J) Indication of resident's religious preference, if any;

(K) Resident's current diagnoses; and

(L) Notation of resident's allergies, if any.

(Publication Instructions: Replace all current existing text in Part 25.8 with the following text.)

25.8 Once a resident moves into a secure environment, the assisted living residence shall comply with the following:

(A) The assisted living residence shall evaluate a resident when the resident expresses the desire to move out of a secure environment, and contact the resident's legal representative, practitioner, and the state long-term care ombudsman and local ombudsman, when appropriate;

(B) The assisted living residence shall ensure that admission to and continuing residence in a secure environment is the least restrictive alternative available and is necessary for the physical and psychosocial well-being of the resident; and

(C) If at any time a resident is determined to be a danger to self or others, the assisted living residence shall be responsible for developing and implementing a temporary plan to monitor the resident's safety along with the protection of others until the issue is appropriately resolved and/or the resident is discharged from the assisted living residence.

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: 2023-00685

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

Health Facilities and Emergency Medical Services Division (1011, 1015 Series)

on 11/15/2023

6 CCR 1011-1 Chapter 07

CHAPTER 7 - ASSISTED LIVING RESIDENCES

The above-referenced rules were submitted to this office on 11/20/2023 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.

December 01, 2023 09:41:40

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Prevention Services Division (1009, 1015, 1016 Series)

CCR number

6 CCR 1015-6

Rule title

6 CCR 1015-6 STATE-DESIGNATED HEALTH PROFESSIONAL SHORTAGE AREA DESIGNATION 1 - eff 01/14/2024

Effective date

01/14/2024

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Prevention Services Division

STATE-DESIGNATED HEALTH PROFESSIONAL SHORTAGE AREA DESIGNATION

6 CCR 1015-6

Adopted by the Board of Health on November 15, 2023; effective January 14, 2024.

Publication Instructions: Replace current rule text from Section 1.1 through 1.7 with the following new text from Section 1.1 through 1.7.

1.1 Purpose

This rule establishes quantitative methods for determining which areas of Colorado have a shortage of health care providers and thus, should receive a state designation as a health professional shortage area.

The methodology for behavioral health care services designation is based upon:

1) The estimated demand for behavioral health care services encounters within a population defined by a discrete geographic area;

2) The estimated supply of behavioral health care services encounters for the population within a discrete geographic area;

3) The determination of whether supply meets demand within a discrete geographic area; and

4) The designation of geographic areas as behavioral health care services health professional shortage areas where the resultant supply falls short of estimated demand for minimally adequate substance use disorder treatment.

The methodology for primary care designation is based upon:

1) The estimated demand for primary care service encounters within a population defined by a discrete geographic area;
2) The estimated supply of primary care service encounters for the population within a discrete geographic area;
3) The determination of whether supply meets demand within a discrete geographic area; and
4) The designation of geographic areas as primary care health professional shortage areas where the resultant supply falls short of estimated demand for primary care services.

1.2 Authority

This regulation is adopted pursuant to the authority in Section 25-1.5-404(1)(a), Colorado Revised Statutes.

1.3 Definitions

1) "Behavioral Health Care Provider," pursuant to Section 25-1.5-502(1.3), C.R.S., means the following providers who provide behavioral health care services within their scope of practice:

   a) a licensed addiction counselor (LAC),

   b) a certified addiction counselor (CAC),

   c) a licensed professional counselor (LPC),

   d) a licensed clinical social worker (LCSW),

   e) a licensed marriage and family therapist (LMFT),

   f) a licensed psychologist (Ph.D. or Psy.D.),

   g) a licensed physician assistant (PA) with specific training in substance use disorder,

   h) an advanced practice nurse (APN) with specific training in substance use disorder, pain management, or psychiatric nursing, or

   i) a physician with specific board certification or training in addiction medicine, pain management, or psychiatry.

2) "Behavioral Health Care Services," pursuant to Section 25-1.5-502(1.5), C.R.S., means services for the prevention, diagnosis, and treatment of, and the recovery from, mental health and substance use disorders.

3) "Capacity" means the typical volume of health service encounters a health care professional can produce within the scope of his or her practice and scheduled clinical hours.

4) "Catchment Area" means a discrete geographic area where a preponderance of the civilian noninstitutionalized population within the service area could reasonably expect to access behavioral health services within the service area without excessive travel, when it is adequately resourced.

5) "Census Block Group" means a statistical division of a census tract defined by the U.S. Census Bureau.

6) "Civilian Noninstitutionalized Population" are all people who live and sleep most of the time within the boundaries of a geographic area but are not

housed in a group quarter such as a correctional institution, juvenile facility, military installation, or dormitory.

7) "Colorado Health Systems Directory" means the clinician data system administered by the Colorado Department of Public Health and Environment's Primary Care Office (section 25-1.5- 403, C.R.S.) which provides a comprehensive database of all licensed clinicians and health care sites in Colorado.

8) "Encounter" means an instance of direct provider to patient interaction with the primary purpose of diagnosing, evaluating or treating a patient's health care concern.

9) "Minimally Adequate Treatment" means the minimum necessary health care service visits for diagnosis, treatment or recovery needed to address a specific or general medical or behavioral health care service need.

10) "Prevalence" means the proportion of a population who has behavioral health care needs at some point within the previous year.

11) "Primary Care Provider" means the following health care professionals as defined in Section 25- 1.5-502(5), C.R.S., who provide primary care services within their scope of practice:

    a) an advanced practice nurse (APN) with a focus or specialty in primary care, women's health, or nurse midwifery;

    b) a physician (MD or DO) with specific board certification or training in family medicine, general internal medicine, or general pediatrics; or

    c) a physician assistant (PA) with a practice focus on primary care services.

12) "Primary Care Services," means a type of primary health services, as defined in Section 25-1.5- 502(10), C.R.S., that involves comprehensive first contact and continuing care services for the prevention, diagnosis, and treatment of any undiagnosed sign, symptom or health concern not limited by problem origin or diagnosis.

13) "Polygon" means a closed, irregular geometric shape on a map surface that defines equivalent road travel distances from a central point within the shape.

14) "Population Centroid" means the geometric center of a group of population points within a geographic shape (e.g., census block group).

15) "State-Designated Health Professional Shortage Area," pursuant to Section 25-1.5-402(11) and Section 25-1.5-502(13), C.R.S., means an area of the state designated by the Primary Care Office in accordance with state-

specific methodologies established by the State Board by rule pursuant to Section 25-1.5-404 (1)(a), C.R.S., as experiencing a shortage of health care professionals or behavioral health care providers.

16) "State Designated Substance Use Disorder Health Professional Shortage Area" means a State-Designated Health Professional Shortage Area experiencing a shortage of behavioral health care providers providing behavioral health care services for substance use disorder.

17) "Substance Use Disorder" means mild, moderate, or severe recurrent use of drugs and/or alcohol that causes clinically and functionally significant impairment of individuals. Impairment may include health concerns, disability, risky behavior, social impairment, and failure to perform significant responsibilities at work, school, or with family. The diagnosis may be applied to the abuse of one or more of ten separate classes of drugs including alcohol, caffeine, cannabis, hallucinogens, inhalants, opioids, sedatives, stimulants, tobacco, and other substances. The dependent use of tobacco and caffeine are not a primary focus of this rule.

1.4 Behavioral Health Care Health Professional Shortage Area Determination Method

1) Catchment areas are created for analysis of behavioral health care provider capacity by determining standard road travel distances from the population centroid of each census block group in Colorado using a variable two-step floating catchment area method.

2) The population of each catchment area is the civilian noninstitutionalized population according to the most recent available data from U.S. Census Bureau at the time of analysis.

3) The estimated burden of behavioral health care needs within each catchment area is determined by multiplying the civilian noninstitutionalized population in the catchment area (section 1.4(2)) by mental illness and substance use disorder prevalence according to age and sex. Substance use disorder prevalence is determined using the most recent available data from the National Survey on Drug Use and Health administered by the U.S. Department of Health and Human Services, Substance Use and Mental Health Services Administration.

4) The estimated behavioral health services demand for substance use disorder in each catchment area is determined by multiplying the estimated burden of substance use disorder (section 1.4(3)) by the number of minimally adequate treatments as reported in the National Comorbidity Survey – Replication administered by the U.S. Department of Health and Human Services, Substance Use and Mental Health Services Administration.

5) The estimated behavioral health care services supply in each catchment area is determined by evaluating a list of behavioral health care providers with a practice address within the catchment area and the behavioral health

care providers' encounter productivity. The list of behavioral health care providers is derived from the most recent available data reported in the Colorado Health Systems Directory administered by the Colorado Department of Public Health and Environment's Primary Care Office. Each behavioral health care provider is assigned a behavioral health service 12 month productivity rate. The sum of encounter productivity for all practicing behavioral health care providers in the catchment area is the total estimated substance use disorder services supply in the catchment area.

6) Designation of a census block group as a State Designated Behavioral Health Care Health Professional Shortage Area occurs when the supply of behavioral health service encounters falls below the per capita demand for minimally adequate treatment for those who experience substance use disorder within the catchment area.

7) Current designation status of each region of the state will be posted at least annually on or about July 1 on a publicly accessible website.

1.5 Primary Care Health Professional Shortage Area Determination Method

1) Catchment areas are created for analysis of primary care provider capacity by determining standard road travel distances from the population centroid of each census block group in Colorado using a variable two-step floating catchment area method.

2) The population of each catchment area is the civilian noninstitutionalized population according to the most recent available data from U.S. Census Bureau at the time of analysis.

3) The estimated demand for primary care services within each catchment area is determined by multiplying the civilian noninstitutionalized population in the catchment area (section 1.5(2)) adjusted for rates of demand for primary care services according to age and sex. Rates of demand for primary care services are determined using the most recent available data from the Medical Expenditure Panel Survey administered by the U.S. Department of Health and Human Services, Agency for Healthcare Research and Quality.

4) The estimated primary care services supply in each catchment area is determined by surveying primary care providers with a practice address within the catchment area. The list of primary care providers is derived from the most recent available data reported in the Colorado Health Systems Directory administered by the Colorado Department of Public Health and Environment's Primary Care Office. Each primary care provider is assigned a primary care service 12 month productivity rate. The sum of encounter productivity for all practicing primary care providers in the catchment area is the total estimated primary care services supply in the catchment area.

5) Designation of a census block group as a State Designated Primary Care Health Professional Shortage Area occurs when the supply of primary

health service encounters falls below the per capita demand for primary care demand within the catchment area.

6) Current designation status of each region of the state will be posted at least annually on or about July 1 on a publicly accessible website.

1.6 Data Sources

1) If current data from the sources cited above are unavailable, the department may rely upon comparable data sources.

2) To the extent available, reliable and practicable, the department will rely upon data collected within one year prior to analysis.

3) Health care providers practice characteristics data may be derived from direct survey methods, claims analysis, peer reviewed and validated workforce research tools, and statistical methods.

1.7 Review

Shortage designation status will be reviewed in 2023 and at least every three years thereafter. More frequent review may be performed where data is available and analytical resources are available. Designation status of each area will remain effective for 36 months from the date of publication or when replaced by a more recent analysis.

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: 2023-00681

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

Prevention Services Division (1009, 1015, 1016 Series)

on 11/15/2023

6 CCR 1015-6

STATE-DESIGNATED HEALTH PROFESSIONAL SHORTAGE AREA DESIGNATION

The above-referenced rules were submitted to this office on 11/28/2023 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.

December 01, 2023 09:34:30

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Safety

Agency

Division of Homeland Security and Emergency Management

CCR number

8 CCR 1507-44

Rule title

8 CCR 1507-44 SCHOOL ACCESS FOR EMERGENCY RESPONSE (SAFER) GRANT PROGRAM 1 - eff 01/14/2024

Effective date

01/14/2024

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

School Access for Emergency

Response (SAFER) Grant Program

8 CCR 1507-44

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

The Agency is proposing to repeal this rule.

Pursuant to Section 24-33.5-2702 (b), C.R.S., the Division of Homeland Security and Emergency Management proposes to repeal these rules. These rules are inaccurate and duplicative of newly adopted rules 8 CCR 1507-70, and their continuance would cause confusion to stakeholders and grant applicants. For these purposes, it is imperatively necessary that these adopted rules are repealed.

~~Pursuant to Section 24-33.5-2104 (4), C.R.S., the Division of Homeland Security and Emergency Management shall promulgate rules and regulations concerning the administration, criteria and time frames for applying for and distributing funds associated with the grant program.~~

~~The General Assembly declared that this act is necessary to better serve schools or public safety network owners in the state by providing funds to improve interoperable communications between schools and first responders. The absence of implementing rules to carry out the purpose of the statute would be contrary~~ to this ~~declaration. For these reasons, it is imperatively necessary that the proposed rules be adopted.~~

Kevin Klein
Director, Division of Homeland Security and Emergency Management

11/15/2023
Date of Repeal

Colorado Department of Public Safety

Division of Homeland Security and Emergency Management

8 CCR 1507-44

School Access for Emergency Response (SAFER) Grant Program

1. Authority

This regulation is adopted pursuant to the authority in section 24-33.5-2104 (4), C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA").

2. Scope and Purpose

This regulation shall govern the implementation of the School Access for Emergency Response (SAFER) Grant Program, which includes the time frames for applying for these grants, the form of the grant program application, and the time frames for distributing grant funds.

3. Applicability

The provisions of these rules shall be applicable to all eligible applicants and recipients of grant funds as provided by law.

4. Definitions

"Grant program" means the School Access for Emergency Response (SAFER) grant program that provides grants to schools and public safety communications system owners for the purpose set forth in 24-33.5-2104(2) for interoperable communication hardware, software, equipment maintenance, and training to allow for seamless communications between new or existing school communications systems and first responder communications systems.

"School" means a school district, public school within a school district, local educational agency (LEA), charter school authorized by a school district pursuant to part 1 of article 30.5 of title 22, charter school authorized by the state charter school institute pursuant to part 5 of article 30.5 of title 22, or board of cooperative services created and operating pursuant to article 5 of title 22 that operates one or more public schools.

"Recipient" means an eligible applicant receiving an award.

"Award" means financial assistance grant that provides support to accomplish a public purpose given by the state to an eligible recipient.

"Period of Performance" means the period of time during which the recipient is required to complete the grant activities and to receive and expend approved funds.

"Memorandum of understanding" means an agreement between two or more parties that is not legally binding to formalize a working relationship.

"Crisis Management Plan" means a plan including tactical strategies and actions for responding to an emergency.

"Interoperability" means the ability of one or more radio systems to communicate with another radio system and other communications devices.

"Interoperable Technology" means software and/or hardware that enables two different radio systems and other devices to communicate, exchange data and use the information which has been exchanged.

"Other Communications Network" means any public or private wire or wireless communications network

~~that allows for real-time voice or data communications between a public safety 911 answering point,~~

schools, and first responders.

"Radio System" means a private network for voice communications.

"Safety Teams" means personnel who have role in crisis management plans.

5. Program Requirements

5.1 Eligibility

A. Applicant must be a school or a public safety communications system owner in order to apply.

B. Eligible school applicants are required to have a memorandum of understanding with any of its regional public safety 911 answering point or the local law enforcement agency or agencies which serve the school for communications interoperability to be eligible to apply.

C. Eligible Applicants must submit an Application developed by the Division of Homeland Security and Emergency Management Office of Grants Management in conformance with the Application and the terms of the program guidance described below.

D. The grant funds may only be used for the following purposes:

1. To deliver training programs to teach district-based security personnel and appropriate school personnel basic procedures for effective communications with first responders during an emergency;

2. To implement an interoperable technology solution to provide or to upgrade the following:

- A system or technology that can be activated and deactivated by the public safety 911 answering point, the network administrator, and the school, using both the radio system and other communications networks;

- Radio and other technology bridge ability that is not radio vendor specific for connecting independent school networks across the school district and public safety networks in the regions; and

- An interoperability solution that operates over radio networks and other communications networks;

3. To maintain or improve a school's existing interoperable communication hardware or software or to provide interoperable communication hardware and/or software to a school that does not yet have it; and

4. For any necessary radio system capacity expansions where school loading has been determined to have significant impact on public safety system loading.

E. The grant agreement between the State and the recipient(s) of the grant program will specify additional requirements, including, but not limited to: performance measures, reporting requirements, and monitoring of recipient's activities and expenditures.

F. Additionally, the following criteria will be evaluated in awarding any grant:

1. The likelihood that funding of the application will improve communications between the school and first responder communication systems.

2. The extent to which the school is fully compliant with the Colorado School Response Framework pursuant to section 22-32-109.1 (4) or 22-30.5-503.5; and

3. ~~Whether the school has a crisis management plan in place with safety team members~~

designated for communications with first responders.

5.2 Award Details

A. Period of Performance: 6 months for year 1, 12 months for year 2-6 (see below)

B. Funding Instrument: Discretionary Grant

5.3 Time Frames for Application

A. Time Frames

Year 1:
Application Submission Deadline: December 3, 2018; 5:00 PM MST
Grant Awarded to Applicants Deadline: December 31, 2018
Grant Fund Distribution Deadline: January 30, 2019
Period of Performance – 6 months: December 31, 2018 – June 30, 2019

Year 2- 6 (2019-2023):
Application Submission Deadline: May 15, 20XX; 5:00 PM MST
Grant Awarded to Applicants Deadline: July 1, 20XX
Grant Fund Distribution Deadline: August 1, 20XX
Period of Performance – 12 months: July 1, 20XX – June 30, 20XX

B. Restrictions

1. Applications that are not submitted by the stated Application Submission Deadline will not be reviewed or considered for funding.
2. Pre-Award Costs are NOT allowed under this program (costs incurred or work completed prior to the award date)

5.4 Application Submissions

A. Applicants can submit their signed application via U.S. mail or via email as listed in the grant 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.

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: 2023-00657

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

Division of Homeland Security and Emergency Management

on 11/15/2023

8 CCR 1507-44

SCHOOL ACCESS FOR EMERGENCY RESPONSE (SAFER) GRANT PROGRAM

The above-referenced rules were submitted to this office on 11/16/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 04, 2023 10:03:47

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Safety

Agency

Division of Homeland Security and Emergency Management

CCR number

8 CCR 1507-45

Rule title

8 CCR 1507-45 SCHOOL SECURITY DISBURSEMENT PROGRAM 1 - eff 01/14/2024

Effective date

01/14/2024

COLORADO

Department of Public Safety

Division of Homeland Security and Emergency Management

School Security Disbursement

Program 8 CCR 1507-45

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

The Agency is proposing to repeal this rule.

Pursuant to Section 24-33.5-2702, C.R.S., the Division of Homeland Security and Emergency Management proposes to repeal these rules. These rules are inaccurate and duplicative of newly adopted rules 8 CCR 1507-71, and their continuance would cause confusion to stakeholders and grant applicants. For these purposes, it is imperatively necessary that these adopted rules are repealed.

~~Pursuant to House Bill 2022-1120, the General Assembly amended section 24-33.5-1810 , C.R.S., related to the School Security Disbursement Program. Section 24-33.5-1810(7), C.R.S. mandates that the Executive Director of the Department of Public Safety shall promulgate rules to establish the time frames for submitting disbursement applications and awarding disbursements and to specify any additional information that must be included in disbursement applications as described in subsection (4)(f) of section 24-33.5-1810. Upon~~ delegation from the ~~Executive Director, the DHSEM Director led the rulemaking hearing that took place on Oct. 5, 2022.~~

~~The General Assembly declared that the department distribute the money credited to the school security disbursement program account for the disbursement program as quickly as practicable based on the receipt of qualifying applications. The absence of implementing rules to carry out the purpose of the statute would be contrary to this declaration. For these reasons, it is imperatively necessary that the proposed rules be adopted~~.

11/15/2023

Kevin Klein
Director, Division of Homeland Security and Emergency Management

Date of Repeal

Colorado Department of Public Safety

Division of Homeland Security and Emergency Management 8 CCR 1507-45

School Security Disbursement Program

1. Authority

This regulation is adopted pursuant to the authority in section 24-33.5-1810 (7), C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA").

2. **Scope and Purpose**

This regulation shall govern the implementation of the School Security Disbursement Program, which includes the time frames for applying for this program, the form of the program application, and the time frames for distributing program funds.

3. **Applicability**

The provisions of these rules shall be applicable to all eligible applicants and recipients of program funds as provided by law.

4. **Definitions**

"Disbursement Program" means the School Security Disbursement Program to disburse funds to local education providers for the purpose set forth in 24-33.5-1810(3), C.R.S. to improve security in public school facilities or vehicles.

"Local Education Provider" means a school district, a charter school that is authorized pursuant to part 1 of article 30.5 of title 22, an institute charter school authorized pursuant to part 5 of article 30.5 of title 22, or board of cooperative services as defined in section 22-5-103, C.R.S.

"Recipient" means an eligible applicant receiving an award.

"Award" means financial assistance that provides support to accomplish a public purpose given by the state to an eligible recipient.

"Period of Performance" means the period of time during which the recipient is required to complete the approved activities and to receive and expend approved funds.

"Match Amount or Local Share" means the portion of the project borne by the applicant, not borne by the State. Local share can include cash and/or in-kind (non-cash contributions.)

5. **Program Requirements**

5.1 Eligibility

A. Applicant must be a local education provider, including any combination of local education providers who wish to apply together as a single regional applicant, in order to apply, or a Nonprofit Organization that is exempt from taxation under section 501(c)(3) of the federal "Internal Revenue Code of 1986".as amended, that applies to work with specific local education providers or first responders, and that:
    1. Has experience providing training for school safety incident response;
    2. Has experience working with law enforcement agencies and other first responders;
    3. Has experience working with school districts, school personnel, and students on issues related to school safety incident response;
    4. And identifies in its application local education providers or first responders that will participate in school safety incident response training or programs.

B. Eligible Applicants must submit an Application developed by the Colorado Division of Homeland Security

and Emergency Management, Office of Grants Management in conformance with the Application and the terms of the program guidance described below.

C. The program funds may only be used for the following purposes:

1. Capital construction that improves the security of a public school facility or public school vehicle, including any structure or installed hardware, device, or equipment that protects a public school facility or public school vehicle and the students, educators, and other individuals who attend, work in, or visit a public school facility or are transported in a public school vehicle from threats of physical harm including but not limited to any structure or installed hardware, device, or equipment that:

   - Prevents the entry of unauthorized individuals into a public school facility or a protected space within a public school facility or onto a public school vehicle;

   - Can be used to expedite communication when a threat is present

2. Training in student threat assessment provided to school building staff who have contact with students which must include best practices for conducting threat assessments, such as instruction on how to prevent bias when conducting a threat assessment;

3. In collaboration with local law enforcement agencies the training for peace officers on interaction with students at schools.

4. School emergency response training for school building staff.

5. Programs to help students become more resilient in meeting the daily challenges they face without resorting to violence against themselves or others, including addressing the fundamentals causes of violence and aggression and students become responsible members of their schools, neighborhoods, communities, and families.

6. Developing and providing training programs, curriculums, and seminars related to school safety incident response; and

7. Developing best practices and protocols related to school safety incident response.

D. The contract agreement between the State and the recipient(s) of the program will specify additional requirements, including, but not limited to: performance measures, reporting requirements, and monitoring of recipient's activities and expenditures.

E. Additionally, the following criteria will be evaluated in awarding any grant:

1. The likely effectiveness of the applicant's use of the disbursed money to improve security in public school facilities or vehicles.

2. The availability and commitment of the applicant to use financial resources (cash or in-kind) to provide local match to support this program.

5.2 **Award Details**

A. Period of Performance: Twenty-Eight (28) Months

B. Funding Instrument: Discretionary

5.3 Time Frames for Application

A. Time Frames

Application Submission Deadline:	January 6, 2023; 5:00 PM MST
Grant Awarded to Applicants Deadline:	March 1, 2023
Grant Fund Distribution Deadline:	April 30, 2023
Period of Performance – 28 months:	March 1, 2023 – June 30, 2025

B. Restrictions

1. Applications that are not submitted by the stated Application Submission Deadline will not be reviewed or considered for funding.
2. Pre award costs are NOT allowed under this program (costs incurred or work completed prior to application).

5.4 Application Submissions

A. Applicants must submit an email and electronic copy of their application as specified in the program application.

5.5 Grant Guidance

The DHSEM Office of Grants Management is responsible for the implementation of this grant program and will develop and publish a grant application and guidance.

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: 2023-00658

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

Division of Homeland Security and Emergency Management

on 11/15/2023

8 CCR 1507-45

SCHOOL SECURITY DISBURSEMENT PROGRAM

The above-referenced rules were submitted to this office on 11/16/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 04, 2023 09:50:53

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Safety

Agency

Division of Homeland Security and Emergency Management

CCR number

8 CCR 1507-49

Rule title

8 CCR 1507-49 URGENT INCIDENT RESPONSE FUND 1 - eff 01/14/2024

Effective date

01/14/2024

DEPARTMENT OF PUBLIC SAFETY DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

Urgent Incident

Response Fund 8 CCR

1507-49

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

The General Assembly enacted section 24-33.5-1623, C.R.S. via House Bill 23-1270 to create the Urgent Incident Response Fund. The bill was signed into law on June 1, 2023. The statute mandates that the Director of the Division of Homeland Security and Emergency Management shall promulgate rules and regulations concerning the criteria for applying for reimbursement, eligibility for determining the amount of reimbursement, and the distribution of receipt of an approved reimbursement from this fund.

This proposed rulemaking finalizes the emergency rules adopted to establish new rules and to continue to meet our statutory requirements for administration of the Urgent Incident Response Cash Fund as set forth in section 24-33.5-1623(2) and (3),
C.R.S. Because the statute is necessary for the immediate preservation of the public peace, health or safety, delay in the promulgation of these rules would be contrary to the statutory mandate. The absence of implementing rules to carry out the purpose of the statute would be contrary to this declaration. For these reasons, it is imperatively necessary that the proposed rules be adopted.

11/15/2023

Kevin Klein
Director, Division of Homeland Security and Emergency Management

Date of Adoption

Colorado Department of Public Safety

Division of Homeland Security and Emergency

Management 8 CCR 1507-49

Colorado Urgent Incident Response Fund

1. Authority

This regulation is adopted pursuant to the authority in section 24-33.5-1623, C.R.S., and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA").

2. Scope and Purpose

This regulation shall govern the use of the Colorado Urgent Response Incident Fund (Fund), including:

1. Applying for reimbursement;
2. Eligibility for determining the amount of reimbursement; and
3. The distribution and receipt of an approved reimbursement.

This regulation does not apply to reimbursement to state agencies and local governments at the level of disasters, emergencies, or disaster emergencies as defined in sections 24-33.5-702, 24-33.5-703, and 24-33.5-704, C.R.S.

3. Applicability

The provisions of this section shall be applicable to all eligible applicants as provided by law.

4. Definitions

"Division" means the Division of Homeland Security and Emergency Management, within the Colorado Department of Public Safety.

"Fund" means the urgent incident response fund created in section 24-33.5-1623 (2), C.R.S.

"Local Government" means a city, county, municipality, city and county, tribal government, or any other political subdivision of the state that is not a state agency.

"Quarterly Progress Report" means a written form or other document determined by the state agency to indicate and report the operational and financial activity of the recipient during the time period specified.

"Reimbursement Request" means a written form or other document determined by the state agency to be used by the fund recipient to request reimbursement from the fund for qualifying expenditures.

"State Agency" means any department, division, commission, council, board, bureau, committee, office, agency, or other governmental unit of the state.

"Summary Report" means a written form or other document determined by the state agency allowing the fund recipients to report the final operational and financial activity of the funds.

"Urgent Incident" means any incident that does not rise to the level of a disaster, an emergency, or a disaster emergency and for which programmatic responsibilities are already in place.

5. Program Requirements

5.1 Eligibility

A. Eligibility is limited to State Agencies and Local Governments as defined above.

5.2 Urgent Incident Need

A. Eligible recipients must demonstrate an urgent need beyond expected programmatic responsibilities and document why the circumstances were not programmed and are urgent, but do not rise to the level of an emergency, a disaster, or a disaster emergency.

5.3 Request for Funding

A. Eligible applicants must submit a written request in the application developed by the Division.

5.4 Amount of the Reimbursement

A. Reimbursement shall not exceed the annual appropriation.

5.5. Determining the Amount of Reimbursement

A. The amount of the reimbursement is at the discretion of the Division and will be determined in a collaborative process with the eligible applicant.

B. The Division will take into consideration:

1. The urgency of the circumstances;
2. The financial capability of the applicant;
3. Cost sharing; and,
4. Other factors that may be applicable to the applicant's need.

5.6 Distribution of Funds

A. For local government awardees, funds will be distributed according to the terms of the Division.

B. For state agency awardees, funds will be distributed according to the terms in the approved State of Colorado Interagency Agreement.

C. Based upon an articulated need, the Division may advance funds to awardees.

5.7 Reporting Requirements

A. Awardees will provide the division with reports consistent with the requirements in the appropriate grant agreement or interagency agreement including, but not limited to:

1. Quarterly Progress Reports
2. Summary Report upon completion of the project; and,
3. Reimbursement Requests

6. Restrictions

A. The Fund cannot be used for any of the following purposes:

1. For any of the purposes specified in section 24-33.5-702, C.R.S.;

2. To reimburse state agencies or local governments for the costs of responding to disasters as defined in section 24-33.5-703 (3) or emergencies as defined in section 24-33.5-703 (3.5), C.R.S.; or

3. For the purpose of responding to a disaster emergency declared pursuant to section 24-33.5-704, C.R.S.

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: 2023-00660

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

Division of Homeland Security and Emergency Management

on 11/15/2023

8 CCR 1507-49

URGENT INCIDENT RESPONSE FUND

The above-referenced rules were submitted to this office on 11/16/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 04, 2023 10:28:43

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Safety

Agency

Division of Homeland Security and Emergency Management

CCR number

8 CCR 1507-80

Rule title

8 CCR 1507-80 Public Safety Communications Trust Fund 1 - eff 01/14/2024

Effective date

01/14/2024

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

8 CCR 1507-80

Public Safety Communications Trust Fund

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

The General Assembly enacted section 24-33.5-2501, C.R.S. via House Bill 22-1353 to create the Office of Public Safety Communications in the Division of the Homeland Security and Emergency Management in the Department of Public Safety. Additionally, in section 24-33.5-2502, the Public Safety Communications Revolving Fund (aka Public Safety Communications Trust Fund) was created to be administered and disbursed by the Office of Public Safety Communications. This bill enacted the transfer of this Office and this Fund from the State Office of Information Technology to the Division of Homeland Security and Emergency Management within the Department of Public Safety, thereby creating the Office and the Fund through their transfer from OIT to CDPS. The bill was signed into law on June 8, 2022 and became effective July 1, 2023. Section 24-33.5-2505, C.R.S. mandates that the Director of the Office of Public Safety Communications shall adopt rules regarding distributions of Public Safety Communications Trust Fund money to and repayment of such money by state and local governments.

Because the statute is necessary for the immediate preservation of the public peace, health or safety, delay in the promulgation of these rules would be contrary to the statutory mandate. The absence of implementing rules to carry out the purpose of the statute would be contrary to this declaration. For these reasons, it is imperatively necessary that the proposed rules be adopted.

11/15/2023

Kevin Klein, Director, Division of Homeland Security and Emergency Management — Date of Adoption

DEPARTMENT OF PUBLIC SAFETY

Division of Homeland Security and Emergency Management
Office of Public Safety Communications

8 CCR 1507 – 80 Public Safety Communications Trust Fund

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

---

1. Authority

This rule is adopted pursuant to § 24-33.5-2505(1)(h) and (i), C.R.S. and the State Administrative Procedure Act § 24-4-101 et seq. C.R.S.

2. Scope and Purpose

This rule governs the Public Safety Communications Trust Fund, the administration of discretionary distributions and repayment of such monies by state and local governments.

3. Applicability

This rule applies to all local governments and state agencies ~~state and local agencies~~ as defined by 24-33.5- 2505(4)(I-II), C.R.S.

4. Definitions

"Director" means the Director of the Office of Public Safety Communications as appointed by the Director of the Division of Homeland Security and Emergency Management.

"Division" means the Division of Homeland Security and Emergency Management within the Colorado Department of Public Safety as created in section 24-33.5-1603, C.R.S.

"Eligible Entities" means the local governments and state agencies that support public safety that may be called upon to deal with natural disasters, health emergencies, acts of terrorism, and other threats to public safety.

"Fund" means the public safety communications trust fund created in section 24-33.5-2505(2)(a), C.R.S.

"Interoperable Communications" means the ability of public safety agencies in various disciplines and jurisdictions to communicate with each other on demand and in real time by voice or date using compatible radio communication systems or other technology.

"Local Government" means a city, county, municipality, city and county, tribal government, or any other political subdivision of the state that is not a state agency.

"Office" means the Office of Public Safety Communications created in section 24-33.5-2502, C.R.S.

"Public Safety Agency" means an agency providing law enforcement, fire protection, emergency medical, or emergency response services.

"Public Safety Communications Systems" means the interoperable public safety radio communications systems conforming with the statewide digital trunked radio system plan and designed to provide instant

and disruption-resistant communication capability for law enforcement agencies and other eligible entities that may be called upon to deal with natural disasters, health emergencies, acts of terrorism, and other threats to public health and safety.

“Quarterly Progress Report” means a written form or other document determine by the state agency to indicate and report the operational and financial activity of the recipient during the time period specified.

“Reimbursement Request” means a written form or other document determined by the state agency to indicate and report the operational and financial activity of the recipient during the time period specified.

“Region” means an all-hazard emergency management region established by executive order of the Governor.

“State Agency” means any department, division, commission, council, board, bureau, committee, office, agency, or other governmental unit of the state.

“Summary Report” means a written form or other document determined by the state agency allowing the fund recipients to report the final operational and financial activity of the funds.

5. Program Requirements

5.1 Eligibility

The principal and interest held in the public safety communications trust fund are available to eligible entities, upon application to the Office, and with the approval of the Director of the Office of Public Safety Communications or delegate, to cover the acquisition, maintenance, or lease of any public safety radio communications systems equipment or other communication devices or equipment by eligible entities conforming with the statewide digital trunked radio system plan.

The Fund may be used to pay the direct and indirect costs, including personal services and operating costs, associated with administering public safety communications.

5.2 Considerations

A. The Director of the Office of Public Safety Communications or delegate, acting within their discretion, shall consider, without limitation, the following factors in authorizing distributions of fund moneys for reimbursement, or for the purchase, leasing, contracting for, or other acquisition of public safety communications equipment for or by eligible entities:

(1) The need for achieving functional interoperability among local, state, and federal public safety radio communications systems by acquiring equipment that meets emerging technical standards for systems interoperability and open network architecture;

(2) The needs of eligible entities that have recently invested in new radio systems, particularly in regard to interoperability;

(3) The promotion of an orderly transition from analog-based to digital-based radio systems; and

(4) The current communications coverage, expansion of coverage and/or resolution of coverage gaps in underserved areas of Colorado.

B. The amount of any distribution for reimbursement or for the purchase of equipment or devices constituting system infrastructure which would allow interoperability between a local

government communications system and the statewide public safety radio communications systems will be paid in accordance with the terms of the state digital trunked radio system plan. The extent to which such expenses will be covered by fund moneys will depend on compliance with the plan, funds available and prior coordination and prior approval by the Office.

C. All expenditures made for the acquisition, maintenance, or lease of communication systems equipment or devices from distributions of fund moneys shall be made pursuant to the requirements set forth under the Colorado Procurement Code, sections 24-101-101, et seq., CRS. If the Code does not address a specific situation, then expenditure of funds will require approval from the Director of the Office of Public Safety Communications or delegate.

D. Expenditures are reimbursable or otherwise eligible for distribution from the fund to the extent moneys remain available in the fund.

5.3 Request for Funding and Approval Process

A. Eligible entities must submit an application letter of estimated costs, supporting eligibility documentation and an implementation schedule to the Office of Public Safety Communications for approval to receive reimbursement from the Fund.

B. Upon receipt of an application letter, the Office staff shall review the request and issue a written recommendation to the Director or delegate, who will render a decision. Written notification of the decision shall be made to the applicant within ninety (90) days including ~~concerning~~ the amount of any distributions to be paid and identifying any non-qualifying costs, if approved.

C. Upon notification of approval to receive Fund reimbursement, the applicant shall enter into a written agreement with the Office, with the approval of the Director or delegate, concerning any terms and/or conditions for distributions made, including without limitation, terms for repayment of amounts paid, any buy-in commitments for participation in the statewide digital trunked radio system, or any obligation to pay an annual user or other type of fee for participation in the state system. In the event equipment or devices are directly purchased by the Office with fund moneys and then leased to the applicant, a written lease agreement shall be executed by the parties.

D. Approved applicants may then apply for distribution of fund moneys for reimbursement of costs or to purchase qualifying public safety communications systems equipment or devices using application forms provided by the Office. Applications for reimbursement must be filed within ninety (90) days of the incurred expenditures.

5.4 Distribution of Funds

A. For local government awardees, funds will be distributed according to the terms of the written Agreement entered into with the Office and according to any additional terms of the Division of Homeland Security and Emergency Management.

B. For state agency awardees, funds will be distributed according to the terms of the written Agreement entered into with the Office and according to the terms in the approved State of Colorado Interagency Agreement.

C. Based upon an articulated need, the Office may advance funds to awardees with the approval of the Director or delegate.

5.5 Reporting Requirements

A. Awardees will provide the Office with reports consistent with the requirements in the appropriate written agreement, Divisional agreement if applicable, or interagency agreement, including, but not limited to:

(1) Quarterly Progress Reports;

(2) Summary Report upon completion of the project; and

(3) Reimbursement Requests.

5.6 Restrictions

A. The statutory provisions for the Public Safety Communications Trust Fund in Part 25 to article 33.5 of title 24, C.R.S. do not apply to the Legislative Department of the State of Colorado.

B. Local and internal public safety communications networks of institutions of higher education may be exempted from the provisions of Part 25 to article 33.5 of title 24 C.R.S. upon application to the Director of the Office of Public Safety Communications; except that all systems must be certified by the Director of the Office of Public Safety Communications as being technically compatible with plans and networks as described in section 24-33.5-2505(1), C.R.S.

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: 2023-00698

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

Division of Homeland Security and Emergency Management

on 11/15/2023

8 CCR 1507-80

Public Safety Communications Trust Fund

The above-referenced rules were submitted to this office on 11/16/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 04, 2023 10:40:11

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Permanent Rules Adopted

Department

Department of Public Safety

Agency

Division of Homeland Security and Emergency Management

CCR number

8 CCR 1507-81

Rule title

8 CCR 1507-81 Office of Public Safety Communications Administration 1 - eff 01/14/2024

Effective date

01/14/2024

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

8 CCR 1507-81

Office of Public Safety
Communications Administration

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

The General Assembly enacted section 24-33.5-2501, C.R.S. via House Bill 22-1353 to create the Office of Public Safety Communications in the Division of the Homeland Security and Emergency Management in the Department of Public Safety. This bill enacted the transfer of this Office and this Fund from the State Office of Information Technology to the Division of Homeland Security and Emergency Management within the Department of Public Safety, thereby creating the Office through its transfer from OIT to CDPS. The bill was signed into law on June 8, 2022 and became effective July 1, 2023. Section 24-33.5-2503, C.R.S. mandates that the Director of the Office of Public Safety Communications shall adopt rules necessary for the administration of such powers, duties, and functions of the Office of Public Safety Communications to ensure the continuity of existence through the transfer of functions.

Because the statute is necessary for the immediate preservation of the public peace, health or safety, delay in the promulgation of these rules would be contrary to the statutory mandate. The absence of implementing rules to carry out the purpose of the statute would be contrary to this declaration. For these reasons, it is imperatively necessary that the proposed rules be adopted.

11/15/2023

Kevin Klein, Director, Division of Homeland Security and Emergency Management — Date of Adoption

DEPARTMENT OF PUBLIC SAFETY

Division of Homeland Security and Emergency Management

Office of Public Safety Communications

8 CCR 1507 – 81 Office of Public Safety Communications Administration

1. Authority

This rule is adopted pursuant to § 24-33.5-2503(5) and § 24-33.5-2504, C.R.S. and the State Administrative Procedure Act § 24-4-101 et seq. C.R.S.

2. Scope and Purpose

This rule governs the continuity of existence of the powers, duties, and functions of the Office of Public Safety Communication regarding the transfer of functions of the Office from the State Office of Information Technology to the Division of Homeland Security and Emergency Management in the Department of Public Safety. The Office of Public Safety Communications is created pursuant to § 24-33.5-2505, C.R.S. to more efficiently support the efforts of State Departments, State Institutions, State Agencies, Law Enforcement Agencies, and any Public Safety Political Subdivisions, and to better serve the Public. The Office of Public Safety Communications will coordinate and manage the establishment of a state public safety communications network, and the Director of the Office of Public Safety Communications will supervise the maintenance and administration of the network pursuant to §§ 24-33.5-2505 and 24-33.5-2509, C.R.S.

3. Applicability

This rule applies to all local governments and state agencies as defined by 24-33.5-2505(4)(I-II), C.R.S.

4. Definitions

“Director” means the Director of the Office of Public Safety Communications as appointed by the Director of the Division of Homeland Security and Emergency Management.

“Division” means the Division of Homeland Security and Emergency Management within the Colorado Department of Public Safety as created in section 24-33.5-1603, C.R.S.

“Interoperable Communications” means the ability of public safety agencies in various disciplines and jurisdictions to communicate with each other on demand and in real time by voice or date using compatible radio communication systems or other technology.

“Local Government” means a city, county, municipality, city and county, tribal government, or any other political subdivision of the state that is not a state agency.

“Office” means the Office of Public Safety Communications created in section 24-33.5-2502, C.R.S.

“Public Safety Agency” means an agency providing law enforcement, fire protection, emergency medical, or emergency response services.

“Public Safety Communications Systems” means the interoperable public safety radio communications systems conforming with the statewide digital trunked radio system plan and

designed to provide instant and disruption-resistant communication capability for law enforcement agencies and other eligible entities that may be called upon to deal with natural disasters, health emergencies, acts of terrorism, and other threats to public health and safety.

"Region" means an all-hazard emergency management region established by executive order of the Governor.

"State Agency" means any department, division, commission, council, board, bureau, committee, office, agency, or other governmental unit of the state.

5. Responsibilities and Requirements

The Director of the Office of Public Safety Communications shall perform or shall delegate the following functions concerning public safety communications to ensure the continuity of existence and the full transfer of functions to the administration of the Division of Homeland Security and Emergency Management in the Department of Public Safety from the State Office of Information Technology:

A. Formulate recommendations for a current and long-range communications plan involving public safety radio communications systems and their integration into applicable public safety communications networks in consultation with local, state, and federal departments, institutions, and agencies;

B. Administer the approved current and long-range plan for public safety communications and supervise all state-owned public safety communications networks, systems, public safety wireless broadband and microwave facilities;

C. Review all existing and future state-owned public safety communications applications, planning, networks, systems, programs, equipment, and facilities and establish priorities for those that are necessary and desirable to accomplish the purposes set forth in part 25 article 33.5 of title 24, C.R.S.;

D. Approve or disapprove the acquisition of public safety communications equipment by any state department, institution, or agency;

E. Establish and enforce public safety communications policies, procedures, standards, and records for management of public safety communications networks and facilities for all state departments, institutions, and agencies;

F. Review, assess, and ensure compliance with federal and state public safety communications regulations pertaining to the needs and function of state departments, institutions, and agencies;

G. Administer the Public Safety Communications Trust Fund created in § 24-33.5-2510, C.R.S.;

H. Exercise the powers, duties, and functions regarding the tactical and long-term interoperable communications plan adopted by each region, and facilitate measure to improve communications among public safety agencies in the region and with public safety agencies of other regions, the state and federal governments, and other states, to include testing, training, and exercise; and

I. Review submissions from regions for tactical and long-term interoperability plans or revisions thereto to determine eligibility to receive homeland security or public safety grant money administered by the Department of Local Affairs, the Department of Public Safety, or the Department of Health and Environment.

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: 2023-00699

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

Division of Homeland Security and Emergency Management

on 11/15/2023

8 CCR 1507-81

Office of Public Safety Communications Administration

The above-referenced rules were submitted to this office on 11/16/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 04, 2023 10:18:15

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Emergency Rules Adopted

Department

Department of Revenue

Agency

Taxation Division

CCR number

1 CCR 201-2

Rule title

1 CCR 201-2 INCOME TAX 1 - eff 12/08/2023

Effective date

12/08/2023

Expiration date

04/06/2024

DEPARTMENT OF REVENUE

Taxation Division

INCOME TAX

1 CCR 201-2

Rule 39-22-2005. Refund of Remaining Excess Revenues from State Fiscal Year 2022-2023 Only.

Basis and Purpose. The bases for this rule are sections 39-21-112(1) and 39-22-2005, C.R.S. The purpose of this rule is to publish the amount of the refund allowed by section 39-22-2005, C.R.S., for the tax year commencing on January 1, 2023.

(1) For the income tax year beginning on January 1, 2023, the amount of the identical individual refund calculated pursuant to section 39-22-2005(2), C.R.S., is:

(a) in the case of a qualified individual filing a single return, $800; and

(b) in the case of two qualified individuals filing a joint return, $1,600.

COLORADO
Department of Revenue
Taxation Division

Colorado Department of Revenue
Statement of Emergency Justification and Adoption
Emergency Rule 39-22-2005

Pursuant to sections 24-4-103(6), 39-21-112(1), and 39-22-2005, C.R.S., I, Heidi Humphreys, Executive Director of the Department of Revenue, hereby adopt emergency rule 39-22-2005.

Section 24-4-103(6), C.R.S., authorizes the Executive Director to adopt temporary or emergency rules if the Executive Director finds that the immediate adoption of the rules are imperatively necessary to comply with a state or federal law or for the preservation of public health, safety, or welfare, and that compliance with the requirements of section 24-4-103, C.R.S., regarding promulgation of permanent rules, would be contrary to the public interest.

I find that the immediate adoption of this rule is imperatively necessary to comply with state law, specifically SB23B-003, which was recently adopted during an extraordinary session of the Colorado General Assembly and signed by Governor Jared Polis on November 20, 2023. The rule publishes the amount of the state refund calculated in accordance with SB23B-003 for the tax year beginning January 1, 2023. Taxpayers will begin claiming the refund before a permanent rule may be promulgated and need this information to ensure the accuracy of their returns and the distribution of the refund required by SB23B-003. Thus, an emergency rule is necessary to comply with state law. As a result, I find that compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest under these circumstances.

Statutory Authority

The statutory authorities for this rule are sections 24-4-103(6), 39-21-112(1), and 39-22-2005, C.R.S.

Purpose

The purpose of this rule is to publish the amount of the state refund allowed by section 39-22-2005, C.R.S., for the tax year commencing on January 1, 2023.

Adoption

For the reasons set forth above, I hereby adopt emergency rule 39-22-2005, which is attached to this Statement. This rule shall be effective on the date of this adoption and shall apply prospectively. This rule shall be in force and effect for a period of one hundred and twenty days from the date of this notice, unless sooner terminated or replaced by a permanent rule adopted in accordance with section 24-4-103, C.R.S.

Heidi Humphreys Digitally signed by Heidi Humphreys
Date: 2023.12.08 09:41:23 -07'00'

Heidi Humphreys
Executive Director
Colorado Department of Revenue

Date

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: 2023-00790

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

Taxation Division

on 12/08/2023

1 CCR 201-2

INCOME TAX

The above-referenced rules were submitted to this office on 12/08/2023 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.

December 14, 2023 09:20:36

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Emergency Rules Adopted

Department

Department of Public Health and Environment

Agency

Health Facilities and Emergency Medical Services Division (1011, 1015 Series)

CCR number

6 CCR 1011-1 Chapter 07

Rule title

6 CCR 1011-1 Chapter 07 CHAPTER 7 - ASSISTED LIVING RESIDENCES 1 - eff 11/15/2023

Effective date

11/15/2023

Expiration date

03/14/2024

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health Facilities and Emergency Medical Services Division

STANDARDS FOR HOSPITALS AND HEALTH FACILITIES

CHAPTER 7 - ASSISTED LIVING RESIDENCES

6 CCR 1011-1 Chapter 7

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

(Publication Instructions: Replace the existing adoption and effective days, Table of Contents, and Parts 1 and 2 with the following.)

Adopted by the Board of Health on November 15, 2023. Effective November 15, 2023.

TABLE OF CONTENTS

PART 1 – STATUTORY AUTHORITY AND APPLICABILITY

1.1 Authority to establish minimum standards through regulation and to administer and enforce such regulations is provided by Sections 25-1.5-103, 25-1.5-118, 25-3-125, 25-27-101, and 25-27-104, C.R.S.

1.2 Assisted living residences, as defined herein, shall comply with all applicable federal and state statutes and regulations including, but not limited to, the following:

(A) This Chapter 7;

(B) 6 CCR 1011-1, Chapter 2, General Licensure Standards;

(C) 6 CCR 1011-1, Chapter 24, Medication Administration Regulations, and Sections 25-1.5-301 through 25-1.5-303 C.R.S, pertaining to medication administration;

(D) 6 CCR 1010-2, Colorado Retail Food Establishment Regulations, pertaining to food safety, for residences licensed for 20 or more beds;

(E) 6 CCR 1009-1, Epidemic and Communicable Disease Control;

(F) 6 CCR 1007-2, Part 1, Regulations Pertaining to Solid Waste Disposal Sites and Facilities, Section 13, Medical Waste; and

(G) 6 CCR 1007-3, Part 262, Standards Applicable to Generators of Hazardous Waste.

PART 2 – DEFINITIONS

For purposes of this chapter, the following definitions shall apply, unless the context requires otherwise:

2.1 “Abuse” means any of the following acts or omissions:

(A) The non-accidental infliction of bodily injury, serious bodily injury or death,

(B) Confinement or restraint that is unreasonable under generally accepted caretaking standards, or

(C) Subjection to sexual conduct or contact that is classified as a crime.

2.2 “Administrator” means a person who is responsible for the overall operation, daily administration, management and maintenance of the assisted living residence. The term “administrator” is synonymous with “operator” as that term is used in Title 25, Article 27, Part 1. The term “administrator” includes individuals appointed as an interim administrator in accordance with Part 4.5(A) unless otherwise indicated.

2.3 “Activities of daily living (ADLs)” means those personal functional activities required by an individual for continued well-being, health and safety. As used in this Chapter 7, activities of daily living include, but are not limited to, accompaniment, eating, dressing, grooming, bathing, personal hygiene (hair care, nail care, mouth care, positioning, shaving, skin care), mobility (ambulation, positioning, transfer), elimination (using the toilet) and respiratory care.

2.4 “Advance medical directive” means a written instruction, as defined in Section 15-18.7-102(2), C.R.S., concerning medical treatment decisions to be made on behalf of the resident who provided the instruction in the event that the individual becomes incapacitated.

2.5 "Alternative care facility" means an assisted living residence certified by the Colorado Department of Health Care Policy and Financing to receive Medicaid reimbursement for the services provided pursuant to 10 CCR 2505-10, Section 8.495.

2.6 "Appropriately skilled professional" means an individual that has the necessary qualifications and/or training to perform the medical procedures prescribed by a practitioner. This includes, but is not limited to, registered nurse, licensed practical nurse, physical therapist, occupational therapist, respiratory therapist, and dietitian.

2.7 "Assisted living residence" or "ALR" means:

(A) A residential facility that makes available to three or more adults not related to the owner of such facility, either directly or indirectly through a resident agreement with the resident, room and board and at least the following services: personal services; protective oversight; social care due to impaired capacity to live independently; and regular supervision that shall be available on a twenty-four-hour basis, but not to the extent that regular twenty-four hour medical or nursing care is required, or

(B) A Supportive Living Program residence that, in addition to the criteria specified in the above paragraph, is certified by the Colorado Department of Health Care Policy and Financing to also provide health maintenance activities, behavioral management and education, independent living skills training and other related services as set forth in the supportive living program regulations at 10 CCR 2505-10, Section 8.515.

(C) Unless otherwise indicated, the term "assisted living residence" is synonymous with the terms "health care entity," "health facility," or "facility" as used elsewhere in 6 CCR 1011-1, Standards for Hospitals and Health Facilities.

2.8 "At-risk person" means any person who is 70 years of age or older, or any person who is 18 years of age or older and meets one or more of the following criteria:

(A) Is impaired by the loss (or permanent loss of use) of a hand or foot, blindness or permanent impairment of vision sufficient to constitute virtual blindness;

(B) Is unable to walk, see, hear or speak;

(C) Is unable to breathe without mechanical assistance;

(D) Is a person with an intellectual and developmental disability as defined in Section 25.5-10-202, C.R.S.;

(E) Is a person with a mental health disorder as defined in Section 27-65-102(11.5), C.R.S.;

(F) Is mentally impaired as defined in Section 24-34-501(1.3)(b)(II), C.R.S.;

(G) Is blind as defined in Section 26-2-103(3), C.R.S.; or

(H) Is receiving care and treatment for a developmental disability under Article 10.5 of Title 27, C.R.S.

2.9 "Auxiliary aid" means any device used by persons to overcome a physical disability and includes but is not limited to a wheelchair, walker or orthopedic appliance.

2.10 "Care plan" means a written description, in lay terminology, of the functional capabilities of an individual, the individual's need for personal assistance, service received from external providers,

and the services to be provided by the facility in order to meet the individual's needs. In order to deliver person-centered care, the care plan shall take into account the resident's preferences and desired outcomes. "Care plan" may also mean a service plan for those facilities which are licensed to provide services specifically for the mentally ill.

2.11 "Caregiver" means a parent, spouse, or other family member or friend of a resident who provides care to the resident.

2.12 "Caretaker neglect" means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, habilitation, supervision or any other service necessary for the health or safety of an at-risk person is not secured for that person or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise, or a caretaker knowingly uses harassment, undue influence or intimidation to create a hostile or fearful environment for an at-risk person.

2.13 "Certified nurse medication aide (CNA-Med)" means a certified nurse aide who meets the qualifications specified in 3 CCR 716-1, Rule 1.19, and who is currently certified as a nurse aide with medication aide authority by the State Board of Nursing.

2.14 "Communicable disease" means the same as the definition set forth in Section 25-1.5-102(l)(a)(IV), C.R.S.

2.15 "Compassionate care visit" means a visit with a friend or family member that is necessary to meet the physical or mental needs of a resident when the resident is exhibiting signs of physical or mental distress, including:

(A) End-of-life situations;

(B) Adjustment support after moving to a new facility or environment;

(C) Emotional support after the loss of a friend or family member;

(D) Physical support after eating or drinking issues, including weight loss or dehydration; or

(E) Social support after frequent crying, distress, or depression.

A compassionate care visit includes a visit from a clergy member or layperson offering religious or spiritual support or other persons requested by the resident for the purpose of a compassionate care visit.

2.16 "Controlled substance" means any medication that is regulated and classified by the Controlled Substances Act at 21 U.S.C., §812 as being schedule II through V.

2.17 "Deficiency" means a failure to fully comply with any statutory and/or regulatory requirements applicable to a licensed assisted living residence.

2.18 "Deficiency list" means a listing of deficiency citations which contains a statement of the statute or regulation violated, and a statement of the findings, with evidence to support the deficiency.

2.19 "Dementia diseases and related disabilities" means a condition where mental ability declines and is severe enough to interfere with an individual's ability to perform everyday tasks. Dementia diseases and related disabilities includes Alzheimer's disease, mixed dementia, Lewy body dementia, vascular dementia, frontotemporal dementia, and other types of dementia.

2.20 "Department" means the Colorado Department of Public Health and Environment or its designee.

2.21 "Disproportionate share facilities" means facilities that serve a disproportionate share of low income residents as evidenced by having qualified for federal or state low income housing assistance; planning to serve low income residents with incomes at or below 80 percent of the area median income; and submitting evidence of such qualification, as required by the Department.

2.22 "Discharge" means termination of the resident agreement and the resident's permanent departure from the facility.

2.23 "Egress alert device" means a device that is affixed to a structure or worn by a resident that triggers a visual or auditory alarm when a resident leaves the building or grounds. Such devices shall only be used to assist staff in redirecting residents back into the facility when staff are alerted to a resident's departure from the facility as opposed to restricting the free movement of residents.

2.24 "Emergency contact" means one of the individuals identified on the face sheet of the resident record to be contacted in the case of an emergency.

2.25 "Essential caregiver" means a designated individual that meets an essential need for the resident by assisting with activities of daily living or positively influencing the behavior of the resident. The goal of such a designation is to help ensure residents continue to receive individualized, person-centered care when limitations on general visitors are in place. Each resident's care plan should include services provided by the essential caregiver.

2.26 "Exploitation" means an act or omission committed by a person who:

(A) Uses deception, harassment, intimidation or undue influence to permanently or temporarily deprive an at-risk person of the use, benefit or possession of anything of value;

(B) Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the at-risk person;

(C) Forces, compels, coerces or entices an at-risk person to perform services for the profit or advantage of the person or another person against the will of the at-risk person; or

(D) Misuses the property of an at-risk person in a manner that adversely affects the at-risk person's ability to receive health care, health care benefits, or to pay bills for basic needs or obligations.

2.27 "External services" means personal services and protective oversight services provided to a resident by family members or healthcare professionals who are not employees, contractors, or volunteers of the facility. External service providers include, but are not limited to, home health, hospice, private pay care providers, caregivers as defined in Part 2.11, and essential caregivers as defined in Part 2.25.

2.28 "High Medicaid utilization facility" means a facility that has no less than 35 percent of its licensed beds occupied by Medicaid enrollees as indicated by complete and accurate fiscal year claims data; and served Medicaid clients and submitted claims data for a minimum of nine (9) months of the relevant fiscal year.

2.29 "Hospice care" means a comprehensive set of services identified and coordinated by an external service provider in collaboration with the resident, family and assisted living residence to provide

for the physical, psychosocial, spiritual and emotional needs of a terminally ill resident as delineated in a care plan. Hospice care services shall be available 24 hours a day, seven days a week pursuant to the requirements for hospice providers set forth in 6 CCR 1011-1, Chapter 21, Hospices.

2.30 “Interim administrator” means an individual meeting the requirements at Parts 6.3 and 6.5(A), who is appointed in accordance with Part 4.5(A) to fulfill the responsibilities of the administrator position while the assisted living residence does not have an individual in the administrator position.

2.31 “Involuntary discharge” means any discharge initiated by the assisted living residence.

2.32 “Licensee” means the person or entity to whom a license is issued by the Department pursuant to Section 25-1.5-103 (1) (a), C.R.S., to operate an assisted living residence within the definition herein provided. For the purposes of this Chapter 7, the term “licensee” is synonymous with the term “owner.”

2.33 "Local ombudsman" means the same as the definition set forth in Section 25-27-102(6.5), C.R.S.

2.34 “Medical waste” means waste that may contain disease causing organisms or chemicals that present potential health hazards such as discarded surgical gloves, sharps, blood, human tissue, prescription or over-the-counter pharmaceutical waste, and laboratory waste.

2.35 “Medication administration” means assisting a person in the ingestion, application, inhalation, or, using universal precautions, rectal or vaginal insertion of medication, including prescription drugs, according to the legibly written or printed directions of the attending physician or other authorized practitioner, or as written on the prescription label, and making a written record thereof with regard to each medication administered, including the time and the amount taken.

(A) Medication administration does not include:

(1) Medication monitoring; or

(2) Self-administration of prescription drugs or the self-injection of medication by a resident.

(B) Medication administration by a qualified medication administration person (QMAP) does not include judgement, evaluation, assessments, or injecting medication (unless otherwise authorized by law in response to an emergent situation.)

2.36 “Medication monitoring” means:

(A) Reminding the resident to take medication(s) at the time ordered by the authorized practitioner;

(B) Handing to a resident a container or package of medication that was lawfully labeled previously by an authorized practitioner for the individual resident;

(C) Visual observation of the resident to ensure compliance;

(D) Making a written record of the resident’s compliance with regard to each medication, including the time taken; and

(E) Notifying the authorized practitioner if the resident refuses or is unable to comply with the practitioner’s instructions regarding the medication.

2.37 "Mistreatment" means abuse, caretaker neglect, or exploitation.

2.38 "Name-based judicial record check" means a background check performed using judicial department records that includes an individual's conviction and final disposition of case records.

2.39 "Nurse" means an individual who holds a current unrestricted license to practice pursuant to Article 255 of Title 12, C.R.S., and is acting within the scope of such authority.

2.40 "Nursing services" means support for activities of daily living, the administration of medications, and the provision of treatment by a nurse in accordance with orders from the resident's practitioner.

2.41 "Owner" means the person or business entity that applies for assisted living residence licensure and/or in whose name the license is issued.

2.42 "Palliative care" means specialized medical care for people with serious illnesses. This type of care is focused on providing residents with relief from the symptoms, pain and stress of serious illness, whatever the diagnosis. The goal is to improve quality of life for both the resident and the family. Palliative care is provided by a team of physicians, nurses and other specialists who work with a resident's other health care providers to provide an extra layer of support. Palliative care is appropriate at any age and at any stage in a serious illness and can be provided together with curative treatment. Unless otherwise indicated, the term "palliative care" is synonymous with the terms "comfort care," "supportive care," and similar designations.

2.43 "Patient or resident with a disability" means an individual who needs assistance to effectively communicate with assisted living residence staff, make health-care decisions, or engage in activities of daily living due to a disability such as:

(A) A physical, intellectual, behavioral, or cognitive disability;

(B) Deafness, being hard of hearing, or other communication barriers;

(C) Blindness;

(D) Autism spectrum disorder; or

(E) Dementia.

2.44 "Personal care worker" means an individual who:

(A) Provides personal services for any resident; and

(B) Is not acting in his or her capacity as a health care professional under Articles 240, 255, 270, or 285 of Title 12 of the Colorado Revised Statutes.

2.45 "Personal services" means those services that an assisted living residence and its staff provide for each resident including, but not limited to:

(A) An environment that is sanitary and safe from physical harm,

(B) Individualized social supervision,

(C) Assistance with transportation, and

(D) Assistance with activities of daily living.

2.46 "Plan of correction" means a written plan to be submitted by an assisted living residence to the Department for approval, detailing the measures that shall be taken to correct all cited deficiencies.

2.47 "Practitioner" means a physician, physician assistant or advance practice nurse (i.e., nurse practitioner or clinical nurse specialist) who has a current, unrestricted license to practice and is acting within the scope of such authority.

2.48 "Pressure sore" (also called pressure ulcer, decubitus ulcer, bed-sore or skin breakdown) means an area of the skin or underlying tissue (muscle, bone) that is damaged due to loss of blood flow to the area. Symptoms and medical treatment of pressure sores are based upon the level of severity or "stage" of the pressure sore.

(A) Stage 1 affects only the upper layer of skin. Symptoms include pain, burning, or itching and the affected area may look or feel different from the surrounding skin.

(B) Stage 2 goes below the upper surface of the skin. Symptoms include pain, broken skin, or open wound that is swollen, warm, and/or red, and may be oozing fluid or pus.

(C) Stage 3 involves a sore that looks like a crater and may have a bad odor. It may show signs of infection such as red edges, pus, odor, heat, and/or drainage.

(D) Stage 4 is a deep, large sore. The skin may have turned black and show signs of infection such as red edges, pus, odor, heat and/or drainage. Tendons, muscles, and bone may be visible.

2.49 "Protective oversight" means guidance of a resident as required by the needs of the resident or as reasonably requested by the resident, including the following:

(A) Being aware of a resident's general whereabouts, although the resident may travel independently in the community; and

(B) Monitoring the activities of the resident while on the premises to ensure the resident's health, safety and well-being, including monitoring the resident's needs and ensuring that the resident receives the services and care necessary to protect the resident's health, safety, and well-being.

2.50 "Qualified medication administration person" or "QMAP" means an individual who passed a competency evaluation administered by the Department before July 1, 2017, or passed a competency evaluation administered by an approved training entity on or after July 1, 2017, and whose name appears on the Department's list of persons who have passed the requisite competency evaluation.

2.51 "Renovation" means the moving of walls and reconfiguring of existing floor plans. It includes the rebuilding or upgrading of major systems, including but not limited to: heating, ventilation, and electrical systems. It also means the changing of the functional operation of the space.

(A) Renovations do not include "minor alterations," which are building construction projects which are not additions, which do not affect the structural integrity of the building, which do not change functional operation, and/or which do not add beds or capacity above what the facility is limited to under the existing license.

2.52 "Resident's legal representative" means one of the following:

(A) The legal guardian of the resident, where proof is offered that such guardian has been duly appointed by a court of law, acting within the scope of such guardianship;

(B) An individual named as the agent in a power of attorney (POA) that authorizes the individual to act on the resident's behalf, as enumerated in the POA;

(C) An individual selected as a proxy decision-maker pursuant to Section 15-18.5-101, C.R.S., et seq., to make medical treatment decisions. For the purposes of this regulation, the proxy decision-maker serves as the resident's legal representative for the purposes of medical treatment decisions only; or

(D) A conservator, where proof is offered that such conservator has been duly appointed by a court of law, acting within the scope of such conservatorship.

2.53 "Restraint" means any method or device used to involuntarily limit freedom of movement including, but not limited to, bodily physical force, mechanical devices, chemicals, or confinement.

2.54 "Secure environment" means any grounds, building or part thereof, method, or device that prohibits free egress of residents. An environment is secure when the right of any resident thereof to move outside the environment during any hours is limited.

2.55 "Self-administration" means the ability of a resident to take medication independently without any assistance from another person.

2.56 "Staff" means employees and contracted individuals intended to substitute for or supplement employees who provide personal services. "Staff" does not include individuals providing external services, as defined herein.

2.57 "State long-term care ombudsman" means the same as the definition set forth in Section 25-27-102(12), C.R.S.

2.58 "Therapeutic diet" means a diet ordered by a practitioner or registered dietician as part of a treatment of disease or clinical condition, or to eliminate, decrease, or increase specific nutrients in the diet. Examples include, but are not limited to, a calorie counted diet; a specific sodium gram diet; and a cardiac diet.

2.59 "Transfer" means being able to move from one body position to another. This includes, but is not limited to, moving from a bed to a chair or standing up from a chair to grasp an auxiliary aid.

2.60 "Volunteer" means an unpaid individual providing personal services on behalf of and/or under the control of the assisted living residence. "Volunteer" does not include individuals visiting the assisted living residence for the purposes of resident engagement.

(Publication Instructions: Replace the existing Part 3.3 with the following.)

3.3 Each owner or applicant shall request a criminal history record check.

(A) If an owner or applicant for an initial assisted living residence license has lived in Colorado for more than three (3) years at the time of the initial application, said individual shall request from the Colorado Bureau of Investigation (CBI) a state fingerprint-based record check with notification of future arrests.

(B) If an owner or applicant for an initial assisted living residence license has lived in Colorado for three (3) years or less at the time of the initial application, said individual shall:

(1) Request from the Colorado Bureau of Investigation (CBI) a state fingerprint-based criminal history record check with notification of future arrests; and

(2) Obtain a name-based criminal history report for each additional state in which the applicant has lived for the past three years, conducted by the respective states' bureaus of investigation or equivalent state-level law enforcement agency or other name-based report as determined by the Department.

(C) The cost of obtaining such information shall be borne by the individual or individuals who are the subject of such check.

(D) The results of the check shall be forwarded to the Department as follows:

(1) For results from CBI, the information shall be forwarded by CBI to the Department.

(2) For equivalent agencies in other states, the information shall be forwarded by the agency to the Department if authorized by such state. If such authorization does not exist, the results shall be forwarded to the Department by the individual.

(E) When the results of a fingerprint-based criminal history record check of an applicant reveal a record of arrest without a disposition, the applicant shall submit to a name-based judicial record check.

(Publication Instructions: Replace the existing Parts 3.10 through 3.18 with the following, add 3.19.)

3.10 Other License Fees

(A) A facility applying for a change of mailing address, shall submit a fee of $75 with the application. For purposes of this subpart, a corporate change of address for multiple facilities shall be considered one change of address.

(B) A facility applying for a change of name shall submit a fee of $75 with the application.

(C) A facility applying for an increased number of licensed beds shall submit a fee of $500 with the application.

(D) A facility applying for a change of administrator shall submit a fee of $500 with the application.

(1) If the change of administrator application is due to the appointment of an interim administrator, the facility shall pay the fee no later than 90 days after the appointment.

(a) If an administrator is appointed during the 90 days and the required change of administrator application is submitted during that time, the facility shall owe a single payment of $500.

(b) If an administrator is appointed more than 90 days after the appointment of the interim administrator, the facility shall pay separate fees for each change of administrator application.

(E) A facility seeking to open a new secure environment shall submit a fee of $1,600 with the first submission of the applicable building plans.

Fine for Lack of Administrator

3.11 Any assisted living residence found to be without an administrator or interim administrator compliant with the requirements in Part 4.5 shall be fined $1,000.

Citing Deficiencies

3.12 The level of the deficiency shall be based upon the number of sample residents affected and the level of harm, as follows:

Level A – isolated potential for harm for one or more residents.

Level B – a pattern of potential for harm for one or more residents.

Level C –isolated actual harm affecting one or more residents.

Level D –a pattern of actual harm affecting one or more residents.

Level E (Immediate Jeopardy) – actual or potential for serious injury or harm for one or more residents.

In determining the level of deficiency to be cited, potential for harm shall mean there is a reasonable expectation that the noncompliance will result in an adverse outcome.

3.13 When a Level E deficiency is cited, the assisted living residence shall immediately remove the cause of the immediate jeopardy risk and provide the Department with written evidence that the risk has been removed.

Plans of Correction

3.14 Pursuant to Section 25-27-105 (2), C.R.S., an assisted living residence shall submit a written plan detailing the measures that will be taken to correct any deficiencies.

(A) Plans of correction shall be in the format prescribed by the Department and conform to the requirements set forth in 6 CCR 1011-1, Chapter 2, Part 2.10.4(B);

(B) The Department has the discretion to approve, impose, modify, or reject a plan of correction as set forth in 6 CCR 1011-1, Chapter 2, Part 2.10.4(B).

Intermediate Restrictions or Conditions

3.15 Section 25-27-106, C.R.S., allows the Department to impose intermediate restrictions or conditions on a licensee that may include at least one of the following:

(A) Retaining a consultant to address corrective measures including deficient practice resulting from systemic failure;

(B) Monitoring by the Department for a specific period;

(C) Providing additional training to employees, owners, or operators of the residence;

(D) Complying with a directed written plan, to correct the violation; and/or

(E) Paying a civil fine not to exceed ten thousand dollars per violation; except the cap may be exceeded at the department's discretion for an egregious violation that results in death or serious injury to a resident after considering the circumstances around the violation. In determining the amount of the fine, in accordance with Section 25-27-106(4)(a), C.R.S.:

(1) The Department shall consider:

(a) The history of harm or injury at the residence;

(b) The number of injuries to residents for which the cause of the injury is unknown;

(c) The adequacy of the residence's occurrence investigations and reporting;

(d) The adequacy of the administrator's supervision of employees to ensure employees are keeping residents safe from harm or injury; and

(e) The residence's compliance with required mandatory reporting of the mistreatment of residents, in accordance with Part 13.11(A).

(2) The Department may vary the amount of the fine depending on the size of the residence, the potential for harm or injury to one or more residents, and whether there is a pattern of potential or actual harm or injury to residents. For these variations, potential for harm shall mean there is a reasonable expectation that the assisted living residence's noncompliance will result in an adverse outcome.

3.16 Intermediate restrictions or conditions may be imposed for Level A and B deficiencies when the Department finds the assisted living residence has violated statutory or regulatory requirements. The factors that may be considered include, but are not limited to, the following:

(A) The level of potential harm to a resident(s);

(B) The number of residents affected;

(C) Whether the conduct leading to the imposition of the restriction are isolated or a pattern; and

(D) The licensee's prior history of noncompliance in general, and specifically with reference to the cited deficiencies.

3.17 For all cases where the deficiency list includes Level C, D, or E deficiencies, the assisted living residence may be required to comply with one or more of the intermediate restrictions or conditions in Part 3.15(A) through (D), and shall be assessed a civil fine in accordance with Part 3.15(E), within the following ranges:

(A) For each Level C deficiency, the fine shall be between $100 and $5,000.

(B) For each Level D deficiency, the fine shall be between $500 and $7,500.

(C) For each Level E deficiency that is cited based on the likelihood of serious injury, serious harm, serious impairment, or death, the fine shall be between $1,000 and $10,000.

(D) For each Level E deficiency that is cited based on actual serious injury, serious harm, serious impairment, or death, the fine shall be between $2,000 and $10,000, except that the Department may exceed $10,000 for any egregious violation(s) or ongoing pattern of egregious violations resulting in serious injury or death.

Appealing the Imposition of Intermediate Restrictions/Conditions

3.18 A licensee may appeal the imposition of an intermediate restriction or condition pursuant to procedures established by the Department and as provided by Section 25-27-106, C.R.S.

(A) Informal Review

Informal review is an administrative review process conducted by the Department that does not include an evidentiary hearing.

(1) A licensee may submit a written request for informal review of the imposition of an intermediate restriction no later than ten (10) business days after the date notice is received from the Department of the restriction or condition. If an extension of time is needed, the assisted living residence shall request an extension in writing from the Department prior to the submittal due date. An extension of time may be granted by the Department not to exceed seven (7) calendar days. Informal review may be conducted after the plan of correction has been approved.

(2) For civil fines, the licensee may request, in writing that, the informal review be conducted in person, which would allow the licensee to orally address the informal reviewer(s).

(B) Formal Review

A licensee may appeal the imposition of an intermediate restriction or condition in accordance with the Administrative Procedure Act (APA) at Section 24-4-105, C.R.S. A licensee is not required to submit to the Department's informal review before pursuing formal review under the APA.

(1) For life-threatening situations, the licensee shall implement the restriction or condition immediately upon receiving notice of the restriction or condition.

(2) For situations that are not life-threatening, the restriction or condition shall be implemented in accordance with the type of condition as set forth below:

(a) For restriction/conditions other than fines, immediately upon the expiration of the opportunity for appeal or from the date that the Department's decision is upheld after all administrative appeals have been exhausted.

(b) For fines, within 30 calendar days from the date the Department's decision is upheld after all administrative appeals have been exhausted.

Supported Living Program Oversight

3.19 An assisted living residence that is certified to participate in the Supported Living Program administered by the Department of Healthcare Policy and Financing (HCPF) shall comply with both HCPF's regulations concerning that program and the applicable portions of this chapter. The Department shall coordinate with HCPF in regulatory interpretation of both license and certification requirements to ensure that the intent of similar regulations is congruently met.

(Publication Instructions: Replace the existing Part 4.5 with the following.)

4.5 The licensee shall appoint an administrator who meets the minimum qualifications set forth in these regulations and delegate to that individual the executive authority and responsibility for the administration of the assisted living residence.

(A) If the assisted living residence does not have an administrator, the licensee shall appoint an interim administrator and delegate to that individual the executive authority and responsibility for the administration of the assisted living residence, until such time that the facility has an administrator.

(1) The licensee shall notify the department of the interim administrator appointment within 24 hours of the appointment in accordance with 6 CCR 1011-1, Chapter 2 – General Licensure, Part 2.9.6.

(2) The interim administrator shall meet the administrator qualifications in Part 6.3.

(3) The interim administrator shall meet the training requirements at Part 6.5(A).

(4) The interim administrator shall be responsible for ensuring compliance with these rules as if they were the administrator. Wherever the term "administrator" appears in these rules, the requirements also apply to interim administrators, unless otherwise indicated.

(B) In accordance with Section 25-27-106(4)(b), C.R.S., any assisted living residence found to be without an administrator or an interim administrator meeting the requirements of 4.5 shall be assessed a fine, as included in Part 3.11 of these rules.

(Publication Instructions: Replace all of the existing Part 6 with the following.)

PART 6 – ADMINISTRATOR

Criminal History and Adult Protective Services Record Checks

6.1 In order to ensure that the administrator or individual appointed as an interim administrator is of good, moral, and responsible character, the assisted living residence shall request a fingerprint-based criminal history record check with notification of future arrests for each prospective administrator prior to hire, or within 10 days of appointment for an interim administrator.

(A) If an administrator applicant has lived in Colorado for more than three (3) years at the time of application, the assisted living residence shall request from the Colorado Bureau of Investigation (CBI) a state fingerprint-based criminal history record check with notification of future arrests.

(B) If an administrator applicant has lived in Colorado for less than three (3) years at the time of application, the assisted living residence shall:

(1) Request from the CBI a state fingerprint-based criminal history record check with notification of future arrests; and

(2) Obtain a name-based criminal history report for each additional state in which the applicant has lived for the past three (3) years, conducted by the respective states' bureaus of investigation or equivalent state-level law enforcement agency or other name-based report as determined by the Department.

(C) The cost of obtaining such information shall be borne by the individual who is the subject of such check. The information shall be forwarded to the department in accordance with Part 3.3(D) of these rules.

(D) When the results of a fingerprint-based criminal history record check of an administrator applicant reveal a record of arrest without a disposition, the administrator applicant shall submit to a name-based judicial record check.

6.2 In order to ensure that the administrator or individual appointed as an interim administrator is of good, moral, and responsible character, the assisted living residence shall obtain a check of the Colorado adult protective services data system pursuant to Section 26-3.1-111, C.R.S. Based on the results of the check, the assisted living residence shall ensure it follows its policy regarding the hiring or continued service of any administrator or individual appointed as an interim administrator, as required by Part 7.4.

Qualifications

6.3 Each administrator or individual appointed as an interim administrator shall be at least 21 years of age, possess a high school diploma or equivalent, and have at least one year of experience supervising the delivery of personal care services that include activities of daily living. If the administrator or interim administrator does not have the required one year of experience supervising the delivery of personal care services including activities of daily living, they shall document they have one or more of the following:

(A) An active, unrestricted Colorado nursing home administrator license;

(B) An active, unrestricted Colorado registered nurse license plus at least six (6) months of work experience in health care during the previous ten (10)-year period;

(C) An active, unrestricted Colorado licensed practical nurse license plus at least one year of work experience in health care during the previous ten (10)-year period;

(D) A bachelor's degree with emphasis in health care or human services plus at least one year of work experience in health care during the previous ten (10)-year period;

(E) An associate's degree with emphasis in health care or human services plus at least two (2) years of work experience in health care during the previous ten (10)-year period;

(F) Thirty (30) credit hours from an accredited college or university with an emphasis in health care or human services plus three (3) years of work experience in health care during the previous ten (10)-year period;

(G) Five (5) or more years of management or supervisory work in the field of geriatrics, human services, or providing care for the physically and/or cognitively disabled during the previous ten (10)-year period; or

(H) A college degree in any field plus two (2) years of health care experience during the previous ten (10)-year period.

6.4 Each administrator or individual appointed as an interim administrator of an assisted living residence shall ensure that qualified medication administration persons (QMAPs) comply with the medication administration requirements and limitations in 6 CCR 1011-1, Chapter 24, and Sections 25-1.5-301 through 25-1.5-303, C.R.S.

Training

6.5 Each administrator shall have completed 40 hours of administrator training before assuming an administrator position. Individuals appointed as an interim administrator shall have completed 40 hours of administrator training within 30 days of appointment. Written proof regarding the successful completion of such training program shall be maintained in the administrator's personnel file. The 40 hours shall be met by one of the following:

(A) Completing an administrator training program that meets the requirements of Part 6.6, below.

(B) Completing a 30-hour administrator training program on or before December 31, 2018, and documenting an additional 10 hours of training in topics related to the assisted Living administrator's responsibilities, regulatory updates, and/or best practices before June 30, 2024.

6.6 An administrator training program shall meet all of the following requirements:

(A) The program or program components are conducted by an accredited college, university, or vocational school; or an organization, association, corporation, group, or agency with specific expertise in the provision of residential care and services; and

(B) The curriculum includes at least 40 actual hours, 20 of which shall focus on applicable state regulations. The remaining 20 hours shall provide an overview of the following topics:

(1) Business operations including, but not limited to:

(a) Budgeting,

(b) Business plan/service model,

(c) Insurance,

(d) Labor laws,

(e) Marketing, messaging and liability consequences, and

(f) Resident agreement.

(2) Daily business management including, but not limited to,

(a) Coordination with external service providers (i.e., community and support services including case management, referral agencies, mental health resources, ombudsmen, adult protective services, hospice, and home care),

(b) Ethics, and

(c) Grievance and complaint process.

(3) Physical plant

(4) Resident care including, but not limited to:

(a) Admission and discharge criteria,

(b) Behavior expression management,

(c) Care needs assessment,

(d) Fall management,

(e) Nutrition,

(f) Person-centered care,

(g) Personal versus skilled care,

(h) Quality management education,

(i) Resident rights,

(j) Sexuality and aging,

(k) Secure environment, and

(l) Medication Management.

(5) Resident psychosocial needs including, but not limited to,

(a) Cultural competency (ethnicity, race, sexual orientation),

(b) Family involvement and dynamics,

(c) Mental health care (maintaining good mental health and recognizing symptoms of poor mental health),

(d) Palliative care standards, and

(e) Resident engagement.

6.7 Competency testing shall be performed to demonstrate that the individuals trained have a comprehensive, evidence-based understanding of the regulations and topics.

Duties

6.8 The administrator, or individual appointed as an interim administrator, shall be responsible for the overall day-to-day operation of the assisted living residence, including, but not limited to:

(A) Managing the day-to-day delivery of services to ensure residents receive the care that is described in the resident agreement, the comprehensive resident assessment, and the resident care plan;

(B) Organizing and directing the assisted living residence's ongoing functions including physical maintenance;

(C) Ensuring that resident care services conform to the requirements set forth in Part 12 of this chapter;

(D) Employing, training, and supervising qualified personnel;

(E) Providing continuing education for all personnel;

(F) Establishing and maintaining a written organizational chart to ensure there are well-defined lines of responsibility and adequate supervision of all personnel;

(G) Reviewing the marketing materials and information published by an assisted living residence to ensure consistency with the services actually provided by the ALR;

(H) Managing the business and financial aspects of the assisted living residence which includes working with the licensee to ensure there is an adequate budget to provide necessary resident services;

(I) Completing, maintaining, and submitting all reports and records required by the Department;

(J) Complying with all applicable federal, state, and local laws concerning licensure and certification; ~~and~~

(K) Ensuring the assisted living residence's compliance with the involuntary discharge requirements in Section 25-27-104.3 C.R.S., and these rules; and

(L) Appointing and supervising a qualified designee who is capable of satisfactorily fulfilling the administrator's duties when the administrator is unavailable.

(1) The name and contact information for the administrator or qualified designee on duty shall always be readily available to the residents and public.

(2) The administrator or qualified designee shall always, whether on or off site, be readily accessible to staff.

(3) When a qualified designee is acting as administrator in an assisted living residence that is licensed for more than 12 beds, there shall be at least one other staff member on duty whose primary responsibility is the daily care of residents.

(Publication Instructions: Replace all of the existing Part 7 with the following.)

PART 7 – PERSONNEL

Criminal History and Adult Protective Services Record Checks

7.1 In order to ensure that staff members and volunteers are of good, moral, and responsible character, the assisted living residence shall request, prior to staff hire or volunteer on-boarding, a name-based criminal history record check for each prospective staff member and volunteer.

(A) If the applicant has lived in Colorado for more than three (3) years at the time of application, the assisted living residence shall obtain a name-based criminal history report conducted by the Colorado Bureau of Investigation (CBI).

(B) If the applicant has lived in Colorado for three years or less at the time of application, the assisted living residence shall obtain a name-based criminal history report for each state in which the applicant has lived for the past three years, conducted by the respective states' bureaus of investigation or equivalent state-level law enforcement agency or other name-based report as determined by the Department.

(C) The cost of obtaining such information shall be borne by the assisted living residence, the contract staffing agency or the individual who is the subject of such check, as appropriate.

7.2 In order to ensure that staff members and volunteers are of good, moral, and responsible character, the assisted living residence shall obtain a check of the Colorado adult protective services data system pursuant to Section 26-3.1-111, C.R.S. Based on the results of the check, the assisted living residence shall ensure it follows its policy regarding the hiring or continued service of any staff member or volunteer, as required by Part 7.4.

Background Check Policies and Procedures

7.3 If the assisted living residence becomes aware of information that indicates a current administrator, individual appointed as an interim administrator, staff member, or volunteer could pose a risk to the health, safety, and welfare of the residents and/or that such individual is not of good, moral, and responsible character, the assisted living residence shall request an updated criminal history and adult protective services record check for such individual from the CBI and/or other relevant law enforcement agency.

7.4 The assisted living residence shall develop and implement policies and procedures regarding the hiring or continued service of any administrator, individual appointed as an interim administrator, staff member, or volunteer whose criminal history or adult protective services records do not reveal good, moral, and responsible character or demonstrate other conduct that could pose a risk to the health, safety, or welfare of the residents.

(A) At a minimum, the assisted living residence shall consider and address the following items:

(1) The history of convictions, pleas of guilty or no contest,

(2) The nature and seriousness of the crime(s),

(3) The time that has elapsed since the convictions,

(4) Whether there are any mitigating circumstances, and

(5) The nature of the position to which the individual will be assigned.

Ability to Perform Job Functions

7.5 Each staff member and volunteer shall be physically and mentally able to adequately and safely perform all functions essential to resident care.

7.6 The assisted living residence shall select direct care staff based on such factors as the ability to read, write, carry out directions, communicate, and demonstrate competency to safely and effectively provide care and services.

7.7 The assisted living residence shall establish written policies concerning pre-employment physical evaluations and employee health. Those policies shall include, at a minimum:

(A) Tuberculin skin testing of each staff member and volunteer prior to direct contact with residents; and

(B) The imposition of work restrictions on direct care staff who are known to be affected with any illness in a communicable stage. At a minimum, such staff shall be barred from direct contact with residents or resident food.

7.8 The assisted living residence shall have policies and procedures restricting on-site access by staff or volunteers with drug or alcohol use that would adversely impact their ability to provide resident care and services.

Staff and Volunteer Orientation and Training

7.9 The assisted living residence shall ensure that each staff member and volunteer receives orientation and training, as follows:

(A) The assisted living residence shall ensure each staff member or volunteer completes an initial orientation prior to providing any care or services to a resident. Such orientation shall include, at a minimum, all of the following topics:

(1) The care and services provided by the assisted living residence;

(2) Assignment of duties and responsibilities, specific to the staff member or volunteer;

(3) Hand Hygiene and infection control;

(4) Emergency response policies and procedures, including:

(a) Recognizing emergencies,

(b) Relevant emergency contact numbers,

(c) Fire response, including facility evacuation procedures

(d) Basic first aid,

(e) Automated external defibrillator (AED) use, if applicable,

(f) Practitioner assessment, and

(g) Serious illness injury, and/or death of a resident.

(5) Reporting requirements, including occurrence reporting procedures within the facility;

(6) Resident rights;

(7) House rules;

(8) Where to immediately locate a resident's advance directive; and

(9) An overview of the assisted living residence's policies and procedures and how to access them for reference.

(B) Dementia Training Requirements

(1) As of January 1, 2024, each assisted living residence shall ensure that its direct-care staff members meet the dementia training requirements in this part 7.8(B).

(2) Definitions: For the purposes of dementia training as required by Section 25-1.5-118, C.R.S.

(a) "Direct-care staff member" means a staff member caring for the physical, emotional, or mental health needs of residents in a covered facility and whose work involves regular contact with residents who are living with dementia diseases and related disabilities.

(b) "Equivalent Training" in this sub-part shall mean any initial training provided by a covered facility meeting the requirements of this sub-part 7.8(B)(3).

(3) Initial Training: Each assisted living residence is responsible for ensuring that all direct-care staff members are trained in dementia diseases and related disabilities.

(a) Initial training shall be available to direct-care staff at no cost to them.

(b) The training shall be competency-based and culturally-competent and shall include a minimum of four hours of training in dementia topics including the following content:

(i) Dementia diseases and related disabilities;

(ii) Person-centered care of residents with dementia;

(iii) Care planning for residents with dementia;

(iv) Activities of daily living for residents with dementia; and

(v) Dementia-related behaviors and communication.

(c) For direct-care staff members already employed prior to January 1, 2024, the initial training must be completed as soon as practical, but no later than 120 days after January 1, 2024, unless an exception, as described in sub-part 7.8(B)(4)(a), applies.

(d) For direct-care staff members hired or providing care on or after January 1, 2024, the initial training must be completed as soon as practical, but no later than 120 days after the start of employment or the provision of direct-care services, unless an exception, as described in sub-part 7.8(B)(4)(B), applies.

(4) Exception to Initial Dementia Training Requirement

(a) Any direct-care staff member who is employed by or providing direct-care services prior to the January 1, 2024, may be exempted from the residence's initial training requirement if sub-parts I and II below are met:

(i) The direct-care staff member has completed an equivalent training, as defined in these rules, within the 24 months immediately preceding January 1, 2024; and

(ii) The direct-care staff member can provide documentation of the satisfactory completion of the equivalent training; and

(iii) If the equivalent training was provided more than 24 months prior to the date of hire as allowed in this exception, the individual must document participation in both the equivalent training and all required continuing education subsequent to the initial training.

(b) Any direct-care staff member who is hired by or begins providing direct-care services on or after January 1, 2024, may be exempted from the residence's initial training requirement if the direct-care staff member:

(i) Has completed an equivalent training, as defined in these rules, either:

(A) within the 24 months immediately preceding January 1, 2024; or

(B) Within the 24 months immediately preceding the date of hire or the date of providing direct-care services; and

(ii) Provides documentation of the satisfactory completion of the initial training; and

(iii) Provides documentation of all required continuing education subsequent to the initial training.

(c) Such exceptions shall not negate the requirement for dementia training continuing education as described in sub-part 7.8(B)(5).

(5) Dementia Training: Continuing Education

(a) After completing the required initial training, all direct-care staff members shall have documented a minimum of two hours of continuing education on dementia topics every two years.

(b) Continuing education on this topic must be available to direct-care staff members at no cost to them.

(c) This continuing education shall be culturally competent; include current information provided by recognized experts, agencies, or academic institutions; and include best practices in the treatment and care of persons living with dementia diseases and related disabilities.

(6) Minimum Requirements for Individuals Conducting Dementia Training

(a) Specialized training from recognized experts, agencies, or academic institutions in dementia disease;

(b) Successful completion of the training being offered or other similar initial training which meets the minimum standards described herein; and

(c) Two or more years of experience in working with persons living with dementia diseases and related disabilities.

(C) The assisted living residence shall provide each staff member or volunteer with training relevant to their specific duties and responsibilities prior to that staff member or volunteer working independently. This training may be provided through formal instruction, self-study courses, or on-the-job training, and shall include, but is not limited to, the following topics:

(1) Overview of state regulatory oversight applicable to the assisted living residence;

(2) Person-centered care;

(3) The role of and communication with external service providers;

(4) Recognizing behavioral expression and management techniques, as appropriate for the population being served;

(5) How to effectively communicate with residents that have hearing loss, limited English proficiency, dementia, or other conditions that impair communication, as appropriate for the population being served;

(6) Training related to fall prevention and ways to monitor residents for signs of heightened fall potential such as deteriorating eyesight, unsteady gait, and increasing limitations that restrict mobility;

(7) How to safely provide lift assistance, accompaniment, and transport of residents;

(8) Maintenance of a clean, safe and healthy environment including appropriate cleaning techniques;

(9) Food safety; and

(10) Understanding the staff or volunteer’s role in end of life care including hospice and palliative care.

Personnel Policies

7.10 The assisted living residence shall develop and maintain written personnel policies, job descriptions and other requirements regarding the conditions of employment, management of staff and resident care to be provided, including, but not limited to, the following:

(A) The assisted living residence shall provide a job-specific orientation for each new staff member and volunteer before they independently provide resident services;

(B) All staff members and volunteers shall be informed of the purpose and objectives of the assisted living residence;

(C) All staff members and volunteers shall be given access to the ALR's personnel policies and the ALR shall provide evidence that each staff member and volunteer has reviewed them; and

(D) All staff members shall wear name tags or other identification that is visible to residents and visitors.

(1) The requirement for name tags may be waived if a majority of attendees at a regularly scheduled assisted living resident meeting agree to do so.

(a) The assisted living residence shall maintain documentation showing that all residents and family members were provided advance notice regarding the topic and meeting details.

(b) The decision to waive the name tag requirement shall be raised and reviewed at the assisted living resident meeting at least annually.

Personnel Files

7.11 The assisted living residence shall maintain a personnel file for each of its employees and volunteers.

7.12 Personnel files for current employees and volunteers shall be readily available onsite for Department review.

7.13 Each personnel file shall include, but not be limited to, written documentation regarding the following items:

(A) A description of the employee or volunteer duties;

(B) Date of hire or acceptance of volunteer service and date duties commenced;

(C) Orientation and training, including first aid and CPR certification, if applicable;

(D) Verification from the Department of Regulatory Agencies, or other state agency, of an active license or certification, if applicable;

(E) Results of background checks and follow up, as applicable; and

(F) Tuberculin test results, if applicable.

(G) Documentation of initial dementia training and continuing education for direct-care staff members:

(1) The residence shall maintain documentation of each employee’s completion of initial dementia training and continuing education. Such

records shall be available for inspection by representatives of the Department.

(2) Completion shall be demonstrated by a certificate, attendance roster, or other documentation.

(3) Documentation shall include the number of hours of training, the date on which it was received, and the name of the instructor and/or training entity.

(4) Documentation of the satisfactory completion of an equivalent training as defined in sub-part 7.8(B)(2)(b) and as required in the criteria for an exception discussed in sub-part 7.8(B)(4), shall include the information required in this sub-part 7.12 (G)(2) and (3).

(5) After the completion of training and upon request, such documentation shall be provided to the staff member for the purpose of employment at another covered facility. For the purpose of dementia training documentation, covered facilities shall include assisted living residences, nursing care facilities, and adult day care facilities as defined in Section 25.5-6-303(1), C.R.S.

7.14 If the employee or volunteer is a qualified medication administration person, the following shall also be retained in the employee's or volunteer's personnel file:

(A) Documentation that the individual's name appears on the Department's list of individuals who have successfully completed the medication administration competency evaluation; and

(B) A signed disclosure that the individual has not had a professional medical, nursing, or pharmacy license revoked in this or any other state for reasons directly related to the administration of medications.

7.15 Personnel files shall be retained for three years following an employee's separation from employment or a volunteer's separation from service and include the reason(s) for the separation.

Personal Care Worker

7.16 The assisted living residence shall ensure that each personal care worker attends the initial orientation required in Part 7.8(A). The assisted living residence shall also require that each personal care worker receives additional orientation on the following topics before providing care and services to a resident:

(A) Personal care worker duties and responsibilities;

(B) The differences between personal services and skilled care; and

(C) Observation, reporting and documentation regarding a resident's change in functional status along with the assisted living residence's response requirements.

7.17 Orientation and training is not required for a personal care worker who is returning to an assisted living residence after a break in service of three years or less if that individual meets all of the following conditions:

(A) The personal care worker completed the assisted living residence's required orientation, training, and competency assessment at the time of initial employment;

(B) The personal care worker successfully completed the assisted living residence's required competency assessment at the time of rehire or reactivation;

(C) The personal care worker did not have performance issues directly related to resident care and services in the prior active period of employment; and

(D) All orientation, training, and personnel action documentation is retained in the personal care worker's personnel file.

7.18 The assisted living residence shall designate an administrator, nurse or other capable individual to be responsible for the oversight and supervision of each personal care worker. Such supervision shall include, but not be limited to:

(A) Being accessible to respond to personal care worker questions, and

(B) Evaluating each personal care worker at least annually.

(1) Each evaluation shall include observation of the personal care worker's performance of his or her assigned tasks.

7.19 The assisted living residence shall only allow a personal care worker to perform tasks that have a chronic, stable, predictable outcome and do not require routine nurse assessment.

7.20 The potential duties of a personal care worker range from observation and monitoring of residents to ensure their health, safety, and welfare, to companionship and personal services.

7.21 Before a personal care worker independently performs personal services for a resident, the supervisor designated by the assisted living residence shall observe and document that the worker has demonstrated his or her ability to competently perform every personal task assigned. This competency check shall be repeated each time a worker is assigned a new or additional personal care task that he or she has not previously performed.

7.22 Only appropriately skilled professionals may train personal care workers and their supervisors on specialized techniques beyond general personal care and assistance with activities of daily living as defined in these rules. (Examples include, but are not limited to, transfers requiring specialized equipment and assistance with therapeutic diets). Personal care workers and their supervisors shall be evaluated for competency before the delivery of each personal service requiring a specialized technique.

(A) Documentation regarding competency in specialized techniques shall be included in the personnel files of both personal care workers and supervisors.

(B) A registered nurse who is employed or contracted by the assisted living residence may delegate to a personal care worker in accordance with the Nursing Practice Act if the registered nurse is the supervising nurse for the personal care worker.

7.23 The assisted living residence shall ensure that each personal care worker complies with all assisted living residence policies and procedures and not allow a personal care worker to perform any functions which are outside of his or her job description, written agreements, or a resident's care plan.

(Publication Instructions: Replace existing Part 8.7 with the following.)

8.7 Each assisted living residence shall have at least one staff member onsite at all times who has current certification in cardiopulmonary resuscitation (CPR) and obstructed airway techniques from a nationally recognized organization (e.g., the American Red Cross, the American Heart Association, the National Safety Council or the American Safety and Health Institute) or a training curriculum that meets the American Heart Association's Emergency Cardiovascular Care (ECC) or International Consensus on Cardio-pulmonary Resuscitation (ILCOR) guidelines. The certification shall either be in Adult CPR or include Adult CPR in its curriculum, and shall include a skills assessment observed and evaluated by an instructor.

(Publication Instructions: Replace all of the existing Part 9 with the following.)

PART 9 – POLICIES AND PROCEDURES

9.1 The assisted living residence shall develop and at least annually review, all policies and procedures. At a minimum, the assisted living residence shall have policies and procedures that address the following items:

(A) Admission and discharge criteria in accordance with Parts 11 and 25, if applicable, including, but not limited to criteria for involuntary discharge as listed in Parts 11.11 through 11.12;

(B) Resident rights;

(C) Grievance procedure and complaint resolution, including a grievance procedure for involuntary discharge in accordance with Part 9.3;

(D) Investigation of abuse, neglect, and exploitation allegations;

(E) Investigation of injuries of known or unknown source/origin;

(F) House rules;

(G) Emergency preparedness;

(H) Fall management;

(I) Provision of lift assistance, first aid, obstructed airway technique, and cardiopulmonary resuscitation;

(J) Unanticipated illness, injury, significant change of status from baseline, or death of resident;

(K) Infection control;

(L) Practitioner assessment;

(M) Health information management;

(N) Personnel policies as required in both Part 6 and Part 7 of these rules;

(O) Staff Training;

(P) Environmental pest control;

(Q) Medication errors and medication destruction and disposal;

(R) Management of resident funds, if applicable;

(S) Policies and procedures related to secure environment, if applicable; ~~and~~

(T) Provision of palliative care in accordance with 6 CCR 1011-1, Chapter 2, Part 4.3, if applicable; and

(U) Visitation in accordance with Part 9.2.

9.2 The assisted living residence shall have written policies and procedures regarding the visitation rights detailed in Section 25-3-125(3)(a), C.R.S. Such policies and procedures shall:

(A) Set forth the visitation rights of the resident, consistent with 42 CFR 482.13(h); 42 U.S.C. 1396r(c)(3)(C); 42 U.S.C. 1395i(c)(3)(C); 42 CFR483.10(a), (b), and (f); and Section 25-27-104, C.R.S., as applicable to the facility type;

(B) Describe any restriction or limitation necessary to ensure the health and safety of residents, staff, or visitors and the reasons for such restriction or limitation;

(C) Be available for inspection at the request of the Department;

(D) Be provided to residents and/or family members upon request; and

(E) Include the right of each resident of an assisted living residence to have at least one visitor of the resident's choosing during their stay at the residence, unless restrictions or limitations under federal law or regulation, other state statute, or state or local public health order apply. This visitation right shall be exercised in accordance with the following:

(1) A visitor to provide a compassionate care visit to alleviate the resident's physical or mental distress.

(2) For a resident with a disability:

(a) A visitor or support person, designated by the resident, orally or in writing, to support the resident during the course of their residency. The support person may visit the resident and may exercise the resident's visitation rights even when the resident is incapacitated or otherwise unable to communicate.

(b) When the resident has not otherwise designated a support person and the resident is incapacitated or otherwise unable to communicate their wishes, an individual may provide an advance medical directive designating the individual as the resident's support person or another term indicating that the individual is authorized to exercise visitation rights on behalf of the resident.

Pursuant to Section 15-18.7-102(2), C.R.S., "(2) 'Advance medical directive' means a written instruction concerning medical treatment decisions to be made on behalf of the adult who provided the instruction in the event that he or she becomes incapacitated. An advance medical directive includes, but need not be limited to: (a) A medical durable

power of attorney executed pursuant to Section 15-14-506; (b) A declaration executed pursuant to the "Colorado Medical Treatment Decision Act", article 18 of this title; (c) A power of attorney granting medical treatment authority executed prior to July 1, 1992, pursuant to Section 15-14-501, as it existed prior to that date; or (d) A CPR directive or declaration executed pursuant to article 18.6 of this title."

(3) For a resident who is under eighteen years of age, the parent, legal guardian, or person standing in loco parentis to the resident is allowed to exercise these visitation rights pursuant to any limitations described in Parts 9.2(F) and (G).

(F) The policies and procedures may impose limitations on visitation rights. During a period when the risk of transmission of a communicable disease is heightened, an assisted living residence may:

(1) Require visitors to enter the residence through a single, designated entrance;

(2) Deny entrance to a visitor who has known symptoms of the communicable disease;

(3) Require visitors to use medical masks, face-coverings, or other personal protective equipment while on the assisted living residence premises or in specific areas of the residence;

(4) Require visitors to sign a document acknowledging:

(a) The risks of entering the residence while the risk of transmission of a communicable disease is heightened; and

(b) That menacing and physical assaults on health-care workers and other employees of the residence will not be tolerated;

(5) Require all visitors, before entering the residence, to be screened for symptoms of the communicable disease and deny entrance to any visitor who has symptoms of the communicable disease;

(6) Require all visitors to the residence to be tested for the communicable disease and deny entry for those who have a positive test result; and

(7) Restrict the movement of visitors within the residence, including restricting access to where immunocompromised or otherwise vulnerable populations are at greater risk of being harmed by a communicable disease.

(8) If an assisted living residence requires that a visitor use a medical mask, face covering, or other personal protective equipment or to take a test for a communicable disease in order to visit a resident at the assisted living residence, nothing in these regulations:

(a) Requires the residence allow a visitor to enter, if the required equipment or test is not available due to lack of supply;

(b) Requires the residence to supply the required equipment or test to the visitor, or bear the cost of the equipment for the visitor; or

(c) Precludes the health-care residence from supplying the required equipment or test to the visitor.

(G) The policies and procedures may impose additional limitations for the visitors of a resident with a communicable disease who is isolated. In this case, the residence may impose additional restrictions including:

(1) Limiting visitation to essential caregivers who are helping to provide care to the resident;

(2) Limiting visitation to one caregiver at a time per resident with a communicable disease;

(3) Scheduling visitors to allow for adequate time for screening, education, and training of visitors and to comply with any limits on the number of visitors permitted in the isolated area at the time; and

(4) Prohibiting the presence of visitors during aerosol-generating procedures or during collection of respiratory specimens.

(H) Any limitations imposed shall be consistent with applicable federal law and regulation and other state statute.

9.3 The assisted living residence shall have an involuntary discharge grievance policy that complies with Section 25-27-104.3, C.R.S., and includes, at a minimum:

(A) The individual designated by the assisted living residence to receive involuntary discharge grievances.

(B) The ability for any of the persons the assisted living residence is required to notify in accordance with Part 11.16 to file a grievance challenging the involuntary discharge and/or reasons for the discharge with the individual designated in subpart (A), above, within 14 calendar days after written notice of the involuntary discharge is provided by the assisted living residence.

(C) The ability for the resident, or other person allowed to file a grievance to receive assistance in preparing and filing a grievance without interference from the assisted living residence.

(D) A requirement that grievances related to involuntary discharge be submitted to the individual designated by the facility in accordance with subpart (A) as follows:

(1) In writing, or

(2) Orally submitted to the individual designated in accordance with subpart (A), above. In the case of an oral submission, the assisted living residence shall ensure the individual submitting the grievance retains proof of the oral submission through a witness or other evidence.

(a) If the grievance is orally submitted and witnessed, the assisted living residence shall ensure that the resident or other person filing the grievance has the witness's name and contact information, and shall keep that information as part of the grievance documentation.

(E) A requirement that no later than 5 business days after the submission of a grievance in accordance with subpart (D), above, the individual designated by the assisted living residence to receive involuntary discharge grievances shall provide a response to the grievance as follows:

(1) A written response shall be provided to the individuals required to receive notice in Part 11.16, the state long-term care ombudsman, and the designated local ombudsman.

(2) An oral explanation of the written response shall be provided to the resident and/or person filing the grievance, as appropriate.

(3) The written response shall include the following statement regarding the filing of an appeal:

"If the resident, or other person that submitted this grievance is dissatisfied with this response, they may file an appeal to the executive director of the Colorado Department of Public Health and Environment within 5 business days after receiving this written response. The appeal must include the original grievance, the original notice of involuntary discharge and supporting documentation given to the resident as part of that notification, and any additional information or documentation."

(F) Acknowledgement that if the resident, the individual filing the grievance, or the assisted living residence is dissatisfied with the findings and recommendations of the Department related to an appeal, they may request a hearing conducted by the Department pursuant to Section 24-4-105, C.R.S.

(G) A requirement that the assisted living residence not take any punitive or retaliatory action against a resident due to the resident filing a grievance or appeal pursuant to this Part.

(H) A requirement that the assisted living residence continue to assist with planning a discharge or transfer of the resident while the grievance or appeal to the Department is pending.

(I) A requirement that the resident be allowed to return to the assisted living residence if all of the following apply:

(1) The stated reason for the involuntary discharge in the notice of involuntary discharge provided in accordance with Part 11.17 is nonpayment of monthly services or room and board,

(2) The assisted living residence discharged the resident on or after the 31st day after the written notice of involuntary discharge was provided to the resident, and

(3) The resident substantially complied with payments due to the residence, as determined through the grievance and appeal process.

(Publication Instructions: Replace all current existing text in Part 11.2 with the following text.)

11.2 An assisted living residence shall not allow to move in any person who:

(A) Needs regular 24-hour medical or nursing care;

(B) Is incapable of self-administration of medication and the assisted living residence does not have staff who are either licensed or qualified under 6 CCR 1011-1, Chapter 24 to administer medications;

(C) Has an acute physical illness which cannot be managed through medication or prescribed therapy;

(D) Has physical limitations that restrict mobility unless compensated for by available auxiliary aids or intermittent staff assistance;

(E) Has incontinence issues that cannot be managed by the resident or staff;

(F) Is profoundly disoriented to time, person, and place with safety concerns that require a secure environment and the assisted living residence does not provide a secure environment;

(G) Has a stage 3 or 4 pressure sore and does not meet the criteria in Part 12.4;

(H) Has a history of conduct that has been disclosed to the assisted living residence that would pose a danger to the resident or others, unless the ALR reasonably believes that the conduct can be managed through therapeutic approaches; or

(I) Needs restraints, as defined herein, of any kind except as statutorily allowed for assisted living residences which are certified to provide services specifically for the mentally ill.

(1) Assisted living residences certified to provide services for the mentally ill shall have policies, procedures, and appropriate staff training regarding the use of restraint and maintain current documentation to show that less restrictive measures were, and continue to be, unsuccessful.

(Publication Instructions: Replace all current existing text in Part 11.6 with the following text.)

11.6 The written resident agreement shall specify the understanding between the parties concerning, at a minimum, the following items:

(A) Assisted living residence charges, refunds, and deposit policies;

(B) The general type of services and activities provided and not provided by the assisted living residence and those which the assisted living residence will assist the resident in obtaining;

(C) A list of specific assisted living residence services included for the agreed upon rates and charges, along with a list of all available optional services and the specified charge for each;

(D) The amount of any fee to hold a place for the resident in the assisted living residence while the resident is absent from the assisted living residence and the circumstances under which it will be charged;

(E) Responsibility for providing and maintaining bed linens, bath and hygiene supplies, room furnishings, communication devices, and auxiliary aids; and

(F) A guarantee that any security deposit will be fully reimbursed if the assisted living residence closes without giving resident(s) written notice at least thirty (30) calendar days before such closure,

(G) Reasons that the assisted living residence could pursue an involuntary discharge of the resident, as listed in Parts 11.11 and 11.12,

(Publication Instructions: Replace all existing text in Parts 11.11 through 11.17 with the following text, add Part 11.18.)

11.11 The assisted living residence shall arrange to discharge any resident who:

(A) Has an acute physical illness which cannot be managed through medication or prescribed therapy;

(B) Has physical limitations that restrict mobility, and which cannot be compensated for by available auxiliary aids or intermittent staff assistance;

(C) Has incontinence issues that cannot be managed by the resident or staff;

(D) Has a stage 3 or stage 4 pressure sore and does not meet the criteria in Part 12.4;

(E) Is profoundly disoriented to time, person, and place with safety concerns that require a secure environment, and the assisted living residence does not provide a secure environment;

(F) Exhibits conduct that poses a danger to self or others and the assisted living residence is unable to sufficiently address those issues through therapeutic approach; and/or

(G) Needs more services than can be routinely provided by the assisted living residence or an external service provider.

11.12 The assisted living residence may also discharge a resident for:

(A) Nonpayment of basic services in accordance with the resident agreement; or

(B) The resident's failure to comply with a valid, signed resident agreement.

11.13 Where a resident has demonstrated that he or she has become a danger to self or others, the assisted living residence shall promptly implement the following process pending discharge:

(A) Take all appropriate measures necessary to protect other residents;

(B) Reassess the resident to be discharged and revise his or her care plan to identify the resident's current needs and what services the assisted living residence will provide to meet those needs; and

(C) Ensure all staff are aware of any new directives placed in the care plan and are properly trained to provide supervision and actions consistent with the care plan.

11.14 The assisted living residence shall coordinate a voluntary or involuntary discharge with the resident, the resident's legal representative and/or the appropriate agency. Prior to discharging a resident because of increased care needs, the assisted living residence shall make documented efforts to meet those needs through other means.

11.15 In the event a resident is transferred to another health care entity for additional care, the assisted living residence shall arrange to evaluate the resident prior to re-admission or discharge the resident in accordance with the discharge procedures specified below.

11.16 The assisted living residence shall provide written notice of any discharge 30 calendar days in advance of discharge except in cases in which the resident requires a level of care that cannot be met by the residence or the resident has demonstrated that they are a danger to themselves or others, whereupon the assisted living residence shall provide written notification with as much advance notice as is reasonable under the circumstances prior to the removal from the residence. Such written notice shall be provided to:

(A) The resident,

(B) The resident's legal representative, and

(C) Any relative or other person the resident has designated to receive notice of a discharge, as listed on the resident's face sheet in accordance with Part 18.9(G).

11.17 Written notice of involuntary discharge must include the following:

(A) A detailed explanation of the reason or reasons for the discharge, including, at a minimum:

(1) Facts and evidence supporting each reason given by the residence, and

(2) A recounting of events leading to the involuntary discharge, including interactions with the resident over a period of time prior to the notice and actions taken to avoid discharge, specifying the timing of the events and actions.

(B) Statements conveying the following information:

(1) That the individual receiving the notice has the right to file a grievance with the residence challenging the involuntary discharge within 14 days of the written notice, regardless of whether the resident has already been removed from the assisted living residence,

(2) That if a grievance is filed, the assisted living residence must provide a response to the grievance within five business days, and

(3) If the resident or person filing the grievance is dissatisfied with the response, that the resident or person filing the grievance may appeal to the executive director of the Colorado Department of Public Health and Environment or their designee.

(C) Names and contact information, including phone numbers, physical addresses, and email addresses, for the state long-term care ombudsman, the designated local ombudsman, and the Colorado Department of Public Health and Environment.

(D) If the involuntary discharge is initiated due to a medical or physical condition resulting in a required level of care that cannot be treated with medication or services routinely provided by the residence's staff or an external service provider, the notice must also include an assessment by the resident's applicable health-care or behavioral health provider of the resident's current needs in relation to the resident's medical and physical condition.

11.18 A copy of any involuntary discharge notice shall be sent to the state long-term care ombudsman and the designated local ombudsman, within five (5) calendar days of the date that it is provided to the resident and the resident's legal representative.

(Publication Instructions: Replace all current existing text in Part 12.10 with the following text.)

12.10 Each resident care plan shall:

(A) Be developed with input from the resident and the resident's representative;

(B) Reflect the most current assessment information;

(C) Promote resident choice, mobility, independence and safety;

(D) Detail specific personal service needs and preferences along with the staff tasks necessary to meet those needs;

(E) Identify all external service providers, including essential caregivers for the purposes of the assisted living residence's visitation policy as required by Part 9.2, along with care coordination arrangements; and

(F) Identify formal, planned, and informal spontaneous engagement opportunities that match the resident's personal choices and needs.

(Publication Instructions: Replace all current existing text in Parts 13.1 through 13.2 with the following text.)

13.1 The assisted living residence shall adopt, and place in a publically visible location, a statement regarding the rights and responsibilities of its residents. The assisted living residence and staff shall observe these rights in the care, treatment, and oversight of the residents. The statement of rights shall include, at a minimum, the following items:

(A) The right to privacy and confidentiality, including:

(1) The right to have private and unrestricted communications with any person of choice;

(2) The right to private telephone calls or use of electronic communication;

(3) The right to receive mail unopened;

(4) The right to have visitors at any time; and

(5) The right to private, consensual sexual activity.

(B) The right to civil and religious liberties, including:

(1) The right to be treated with dignity and respect;

(2) The right to be free from sexual, verbal, physical or emotional abuse, humiliation, intimidation, or punishment;

(3) The right to be free from neglect;

(4) The right to live free from financial exploitation, restraint as defined in this chapter, and involuntary confinement except as allowed by the secure environment requirements of this chapter;

(5) The right to vote;

(6) The right to exercise choice in attending and participating in religious activities;

(7) The right to wear clothing of choice unless otherwise indicated in the care plan; and

(8) The right to care and services that are not conditioned or limited because of a resident's disability, sexual orientation, ethnicity, and/or personal preferences.

(C) The right to personal and community engagement, including:

(1) The right to socialize with other residents and participate in assisted living residence activities, in accordance with the applicable care plan;

(2) The right to full use of the assisted living residence common areas in compliance with written house rules;

(3) The right to participate in resident meetings, voice grievances, and recommend changes in policies and services without fear of reprisal;

(4) The right to participate in activities outside the assisted living residence and request assistance with transportation; and

(5) The right to use of the telephone including access to operator assistance for placing collect telephone calls.

(a) At least one telephone accessible to residents utilizing an auxiliary aid shall be available if the assisted living residence is occupied by one or more residents utilizing such an aid.

(D) The right to choice and personal involvement regarding care and services, including:

(1) The right to be informed and participate in decision making regarding care and services, in coordination with family members who may have different opinions;

(2) The right to be informed about and formulate advance directives;

(3) The right to freedom of choice in selecting a health care service or provider;

(4) The right to expect the cooperation of the assisted living residence in achieving the maximum degree of benefit from those services which are made available by the assisted living residence;

(a) For residents with limited English proficiency or impairments that inhibit communication, the assisted living residence shall find a way to facilitate communication of care needs.

(5) The right to make decisions and choices in the management of personal affairs, funds, and property in accordance with resident ability;

(6) The right to refuse to perform tasks requested by the assisted living residence or staff in exchange for room, board, other goods or services;

(7) The right to have advocates, including members of community organizations whose purposes include rendering assistance to the residents;

(8) The right to receive services in accordance with the resident agreement and the care plan; and

(9) The right to thirty (30) calendar days' written notice of changes in services provided by the assisted living residence including, but not limited to, involuntary change of room or changes in charges for a service. Exceptions to this notice are:

(a) Changes in the resident's medical acuity that result in a documented decline in condition and that constitute an increase in care necessary to protect the health and safety of the resident; and

(b) Requests by the resident or the family for additional services to be added to the care plan.

(10) The right to designate the individuals to be notified in cases of emergency or involuntary discharge.

(E) The right to visitation in compliance with facility policy as set forth in Part 9.2.

Ombudsman Access

13.2 In accordance with the Supporting Older Americans Act of 2020 (P.L. 116-131), and Sections 26-11.5-108 and 25-27-104(2)(d), C.R.S., an assisted living residence shall permit access to the premises and residents by the state long-term care ombudsman and the designated local ombudsman at any time during an ALR's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated.

(A) For the purposes of complying with this Part 13.2, access to residents shall include access to the assisted living residence's contact information for the resident and the resident's representative.

(Publication Instructions: Replace all current existing text in Part 13.10 with the following text.)

13.10 Each assisted living residence shall develop and implement an internal process to ensure the routine and prompt handling of grievances or complaints brought by residents, family members,

or advocates. The process for raising and addressing grievances and complaints shall be placed in a visible on-site location along with full contact information for the following agencies:

(A) The state long-term care ombudsman and local ombudsman;

(B) The Adult Protection Services of the appropriate county Department of Social Services;

(C) The advocacy services of the area's agency on aging;

(D) The Colorado Department of Public Health and Environment; and

(E) The Colorado Department of Health Care Policy and Financing, in those cases where the assisted living residence is licensed to provide services specifically for persons with intellectual and developmental disabilities.

(Publication Instructions: Replace the heading language between the existing Part 13.10 and 13.11 with the following.)

Investigation of Abuse and Neglect Allegations or Injuries of Unknown Origin

(Publication Instructions: Replace all current existing text in Parts 18.7 through 18.9(K) with the following text, add 18.9(L) .)

18.7 Each resident or legal representative of a resident shall be allowed to inspect that resident's own record in accordance with Section 25-1-801, C.R.S. Upon request, resident records shall also be made available for inspection by the state long-term care ombudsman and local ombudsman pursuant to Section 26-11.5-108, C.R.S., Department representatives and other lawfully authorized individuals.

Content

18.8 Resident records shall contain, but not be limited to, the following items:

(A) Face Sheet;

(B) Practitioner order;

(C) Individualized resident care plan;

(D) Progress notes which shall include information on resident status and wellbeing, as well as documentation regarding any out of the ordinary event or issue that affects a resident's physical, behavioral, cognitive and/or functional condition, along with the action taken by staff to address that resident's changing needs;

(1) The assisted living residence shall require staff members to document, before the end of their shift, any out of the ordinary event or issue regarding a resident that they personally observed, or was reported to them.

(E) Medication Administration Record;

(F) Documentation of on-going services provided by external service providers including, but not limited to, caregivers, essential caregivers, aides, podiatrists, physical therapists, hospice and home care services, and other practitioners, assistants, and care providers;

(G) Advance directives, if applicable, with extra copies; and

(H) Final disposition of resident including, if applicable, date, time, and circumstances of a resident's death, along with the name of the person to whom the body is released.

18.9 The face sheet shall be updated at least annually and contain the following information:

(A) Resident's full name, including maiden name, if applicable;

(B) Resident's sex, date of birth, and marital status;

(C) Resident's most recent former address;

(D) Resident's medical insurance information and Medicaid number, if applicable;

(E) Date of admission and readmission, if applicable;

(F) Name, contact information, and mailing address, if available, for family members, legal representatives, and/or other persons to be notified specifically in case of emergency;

(G) Name, contact information, and mailing address, if available, for the legal representative and all relatives or other persons the resident and/or legal representative specifically designates to receive a notice of discharge in accordance with Part 11.16;

(H) Name, address, and contact information for resident's practitioner and case manager, if applicable;

(I) Resident's primary spoken language and any issues with oral communication;

(J) Indication of resident's religious preference, if any;

(K) Resident's current diagnoses; and

(L) Notation of resident's allergies, if any.

(Publication Instructions: Replace all current existing text in Part 25.8 with the following text.)

25.8 Once a resident moves into a secure environment, the assisted living residence shall comply with the following:

(A) The assisted living residence shall evaluate a resident when the resident expresses the desire to move out of a secure environment, and contact the resident's legal representative, practitioner, and the state long-term care ombudsman and local ombudsman, when appropriate;

(B) The assisted living residence shall ensure that admission to and continuing residence in a secure environment is the least restrictive alternative available and is necessary for the physical and psychosocial well-being of the resident; and

(C) If at any time a resident is determined to be a danger to self or others, the assisted living residence shall be responsible for developing and implementing a temporary plan to monitor the resident's safety along with the protection of others until the issue is appropriately resolved and/or the resident is discharged from the assisted living residence.

EMERGENCY RULEMAKING FINDING AND JUSTIFICATION
for Amendments to
6 CCR 1011-1, Chapter 7 – Assisted Living Residences
Adopted by the Board of Health on November 15, 2023. Effective November 15, 2023.

Emergency Rulemaking Finding and Justification.
An emergency rulemaking, which waives the initial Administrative Procedure Act noticing requirements, is necessary to comply with state law. Emergency rulemaking is authorized pursuant to Section 24-4-103(6), C.R.S. as SB22-154 requires rules adopted by the Board of Health to be effective no later than January 1, 2024.

This emergency rule shall become effective on adoption. It will be effective for no more than 120 days after its adoption unless made permanent through a rulemaking that satisfies the Administrative Procedure Act noticing requirements.

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: 2023-00764

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

Health Facilities and Emergency Medical Services Division (1011, 1015 Series)

on 11/15/2023

6 CCR 1011-1 Chapter 07

CHAPTER 7 - ASSISTED LIVING RESIDENCES

The above-referenced rules were submitted to this office on 11/20/2023 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.

December 01, 2023 09:45:54

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 12/11/2023

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 ADMINISTRATIVE ACTION HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

At the date, time and location listed below, the Water Quality Control Commission will hold a public Administrative Action Hearing to consider approval of the Water Quality Control Division's proposed submittal of projects for FY24-25 Section 319 nonpoint source funds.

SCHEDULE OF IMPORTANT DATES:

Initial list of recommended projects available	1/31/2024	On commission's web at https://cdphe.colorado.gov/wqcc-administrative-action-hearings
Written comments due	2/14/2024	Additional submittal information below
Final list of recommended projects available	2/28/2024	On commission's web at https://cdphe.colorado.gov/wqcc-administrative-action-hearings
Administrative Action Hearing	**3/11/2024 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 encourages input from interested persons, either in writing prior to the hearing or orally at the hearing. Interested persons should provide their opinions or recommendations as to whether the foregoing regulation should be continued in its current form, repealed, or changed, and if so, in what respect.

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:

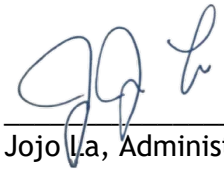
The provisions of 25-8-202(1)(f) C.R.S. and section 21.5 B of the "Procedural Rules" (5 CCR 1002-21) provide the authority for this hearing.

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. Party status requests shall not be considered by the commission.

Dated this 4th day of December 2023 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION



Jojo La, Administrator

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 12/11/2023

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:

Triennial review of the commission's regulation titled:

"Chatfield Reservoir Control Regulation ", Regulation #73 (5 CCR 1002-73).

PURPOSE OF HEARING:

This hearing is to fulfill State statutory requirements for triennial review of control regulations.

SCHEDULE OF IMPORTANT DATES:

Written comments due	2/28/2024	Additional submittal information below
Public Hearing	**3/11/2024** **9:00 am**	**Remote Via Zoom**

PROCEDURAL MATTERS:

The commission encourages input from interested persons, either in writing prior to the hearing or orally at the hearing. Interested persons should provide their opinions or recommendations as to whether the foregoing regulation should be continued in its current form, repealed, or changed, and if so, in what respect.

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.

Any suggested changes deemed by the commission to require further action will be proposed as regulatory changes for subsequent public rulemaking. Recommendations for changes should be concise and supported by reference to the evidence that would be offered if the commission moved forward to formally consider the recommended regulatory amendments. At this informational hearing the commission does not desire to hear the full evidence that would be presented at a rulemaking hearing that would follow. The commission requests only the information needed to determine whether or not to propose a regulatory change. Oral public comment will be accepted at the hearing.

AUTHORITY FOR PUBLIC HEARING:

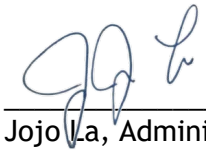
The provisions of 25-8-202(1)(f) C.R.S. and section 21.5 B of the "Procedural Rules" (5 CCR 1002-21) provide the authority for this hearing.

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. Party status requests shall not be considered by the commission.

Dated this 4th day of December 2023 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION



Jojo La, Administrator

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 12/11/2023

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 ADMINISTRATIVE ACTION HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

At the date, time and location listed below, the Water Quality Control Commission will hold a public Administrative Action Hearing to consider approval of an updated Section 303(d) Listing Methodology, to be used for development of Colorado's 2026 Section 303(d) List of waters requiring total maximum daily loads (TMDLs) and an accompanying 2026 Monitoring and Evaluation List (Regulation #93). In this hearing, the commission will also consider any alternative proposals for a Listing Methodology.

SCHEDULE OF IMPORTANT DATES:

Draft proposal deadline	1/17/2024	On commission's website at https://cdphe.colorado.gov/wqcc-administrative-action-hearings
Responsive comments due	1/31/2024	Additional submittal information below
Rebuttal comments due	2/21/2024	On commission's website at https://cdphe.colorado.gov/wqcc-administrative-action-hearings
Revised proposal due	2/28/2024	On commission's website at https://cdphe.colorado.gov/wqcc-administrative-action-hearings
Public Hearing	**3/11/2024 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 encourages input from interested persons, either in writing prior to the hearing or orally at the hearing. Interested persons should provide their opinions or recommendations as to whether the foregoing guidance document should be continued in its current form, repealed, or changed, and if so, in what respect.

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:

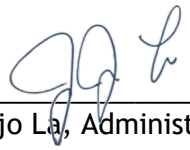
The provisions of 25-8-202(1)(f) C.R.S. and section 21.5 B of the "Procedural Rules" (5 CCR 1002-21) provide the authority for this hearing.

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. Party status requests shall not be considered by the commission.

Dated this 4th day of December 2023 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION



Jojo La, Administrator

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 12/21/2023

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

COLORADO
Department of Health Care Policy & Financing

PUBLIC NOTICE

December 25, 2023

Physician Service Alternative Payment Model 2 Commendable Threshold and Historical Data Period

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 Historical Data Period referenced for current and upcoming Performance Years in the physician services Alternative Payment Model 2 (APM 2), and also updates obsolete dates in referenced in the payment methodology, effective January 1, 2024 for the Commendable Threshold base data, and effective February 1, 2024 for the Prospective Payment base data. The update is needed to reflect the correct historical data periods and impacts providers reimbursed through the APM 2.

The annual aggregate increase in expenditures (including state funds and federal funds) is $0 in FFY 2024 and $0 in FFY 2025.

General Information

A link to this notice will be posted on the Department's website starting on December 25, 2023. Written comments may be addressed to:

Director, Health Policy Office
Colorado Department of Health Care Policy and Financing
303 E. 17th Avenue, Suite 1100
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 12/21/2023

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

COLORADO
Department of Health Care Policy & Financing

PUBLIC NOTICE

December 25, 2023

Direct Entry Midwife

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 create and implement an additional provider type as another option for perinatal care. Currently, Colorado only allows and reimburses the services of Certified Nurse Midwife (CNM) providers. The current policy does not expressly allow or disallow the practice of Direct Entry Midwife (DEM) providers, thus the update in both the policy and rule are needed to increase provider diversity and perinatal care access to our members. The new DEM provider offers care, education, counseling and support to women and their families throughout the pregnancy, birth and the postpartum period. DEMs provide on-going care throughout pregnancy and continuous, hands-on care during labor, birth and the immediate postpartum period, as well as maternal and well-baby care through the 6-8 week postpartum period. DEMs can provide initial and ongoing comprehensive assessment, diagnosis, and treatment. DEMs are trained to recognize abnormal or dangerous conditions requiring the consultation of other healthcare professionals. They can conduct physical examinations, administer medications, use devices as allowed by state law, and order and interpret laboratory and diagnostic tests. DEMs do not have prescriptive authority to order medications, effective April 1, 2024.

The annual aggregate increase in hospice expenditures (including state funds and federal funds) is $0 (state share $0; federal share $0) in FFY 2024 and $0 (state share $0; federal share $0) in FFY 2025.

General Information

A link to this notice will be posted on the Department's website starting on April 1, 2024. Written comments may be addressed to:

Director, Health Policy Office
Colorado Department of Health Care Policy and Financing
303 E. 17th Avenue, Suite 1100
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 12/21/2023

Department

Department of Early Childhood

Agency

Division of Early Learning, Licensing, and Administration

COLORADO
Department of Early Childhood

December 21, 2023

Notice of Rescheduled Public Rulemaking Hearing

The Colorado Department of Early Childhood (CDEC/Department) filed a Notice of Hearing with the Colorado Secretary of State (SOS Tracking Number: 2023-00761) on November 15, 2023, to provide notice of the Public Rulemaking Hearing on Monday, December 18, 2023 at 5:30 p.m. A major component of this rulemaking hearing was for the Executive Director to consider permanent adoption of the proposed Family Child Care Home (FCCH) rules.

The Department postponed adoption of the proposed FCCH rules, to allow additional time to review and thoroughly consider all of the public feedback received. The proposed FCCH rules will be considered for permanent adoption at the next **Public Rulemaking Hearing on Monday, January 22, 2024, from 4:00 - 7:00 p.m.**
(Zoom Link: https://us02web.zoom.us/meeting/register/tZIqc-yspj0uGtT5EP36wKEjltxdR1mb0z3Y)

For more information please visit the Department's Rulemaking Webpage (https://cdec.colorado.gov/for-partners/rulemaking-rules-advisory-council); or review the CDEC Rule Tracker for the Department's most up-to-date rulemaking information (https://lookerstudio.google.com/reporting/a762872b-8aa3-4f4d-83b8-a5faa80d1dc9).

COLORADO
Department of Early Childhood

Rule Author/Division Director: Amanda Schoniger - CDEC Carin Rosa - CDEC	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: 2023-00761 / Updated

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 (Department), the Division of Early Learning Licensing & Administration (DELLA) is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. 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 the Department's 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, and 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. The rules are intended to expand qualification options; decrease barriers to operating programs, including outdoor space requirements; and increase infant, toddler and school age spots in licensed Family Child Care Homes; and expand the health, safety, and professional development requirements

	for providers. 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 sections 26.5-1-105(1), 26.5-5-314(1), C.R.S.(2023). These rules are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 through 24-4-209, C.R.S. (2023) (the "APA"); the Anna Jo Garcia Haynes Early Childhood Act, Title 26.5 of the C.R.S.(the "Early Childhood Act");the Child Care Licensing Act, sections 26.5-5-301 through 26.5-5-329, C.R.S. (2023); 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.
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: 3/16/2024 (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: 1. 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. 2. 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. 3. American Academy of Pediatrics Recommendations for Preventive Pediatric Health Care ended 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/ . 4. 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. 5. 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. 6. 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. 7. Consumer Product Safety Commission (CPSC) at 16 CFR § 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. § 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.

[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.

	8. 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. 9. 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. 10. of Colorado child passenger safety laws at sections 42-4-236 and 42-4-237, C.R.S. 11. Colorado child passenger safety 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

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,	List of activities and dates: **Infant Care/FCCH Strategic Plan Legislation-** January 10, 2019- 4:00-4:30 **Family Child Care Reg & Fire Safety** February 23, 2021 March 19, 2021 June 16, 2021

[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.

surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	**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

	Large Stakeholder meetings- June 21, 2021- 12:00-2:00 July 21, 2021- 2:30-4:15 **Large Stakeholder meetings-** March 18 2023 : 9-11 March 7 2023: 10-12 February 9 2023: 2:30-5 The Department emailed all stakeholders with a link to provide public comment. Public comment feedback posted for 30 days. The Department responded to all comments received during the 30 days, updating rules to incorporate public comments if necessary. Request for public comment sent out June 20, 2023 through July 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-EpbTeblZNX7864yDtaFLoUWt4I2MnbwA/edit#responses 8 - DELLA FCCH: CDEC No. 2023-05-008
Assistant Attorney General Review:	Aug 9, 2023 - Oct 25, 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) Jan 22, 2024 (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, DELLA is required to move child care licensing rules from the Colorado Department of Human Service rule volumes to the new Department of Early Childhood rule volumes. These revisions incorporate Department 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 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's rule volumes 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 agencies, 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 children's 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 rule volumes to the Department of Early Childhood rule volumes.
   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 Executive Director rule-making level. In addition, the Department must move these rules to the Department's rule volumes.
   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, DELLA is required to move child care licensing rules from the Colorado Department of Human Service rules to the new rules. These rule revisions incorporate Department rule numbering, comply with state and federal statutes, make technical changes, and incorporate stakeholder feedback on expanding the availability of care options in family child care homes. 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.

Calendar of Hearings

Hearing Date/Time	Agency	Location
01/18/2024 10:00 AM	Taxation Division	Virtual Hearing - See Comments
01/18/2024 10:00 AM	Taxation Division	Virtual Hearing - See Comments
01/24/2024 03:00 PM	Division of Motor Vehicles	Virtual
01/18/2024 09:15 AM	Division of Gaming - Rules promulgated by Gaming Commission	1707 Cole Blvd, Redrocks Conference Room, Lakewood, CO 80401, and virtually
01/18/2024 09:15 AM	Division of Gaming - Rules promulgated by Gaming Commission	1707 Cole Blvd, Redrocks Conference Room, Lakewood, CO 80401, and virtually
02/14/2024 09:00 AM	Colorado State Board of Education	201 E. Colfax, Denver
02/14/2024 09:00 AM	Colorado State Board of Education	201 E. Colfax, Denver
01/25/2024 09:00 AM	Division of Professions and Occupations - Board of Chiropractic Examiners	Webinar only - See below
01/24/2024 09:00 AM	Division of Professions and Occupations - State Electrical Board	Webinar only - See below
01/24/2024 09:30 AM	Division of Professions and Occupations - State Board of Nursing	Webinar only - See below
01/18/2024 09:00 AM	Division of Professions and Occupations - State Board of Pharmacy	Webinar only - See below
01/29/2024 11:30 AM	Public Utilities Commission	By video conference using Zoom at a link in the calendar of events on the Commissions website: https://puc.colorado.gov/
02/20/2024 09:00 AM	State Personnel Board and State Personnel Director	VIRTUAL ONLY Zoom Meeting (instructions in Notice of Hearing and below)
02/12/2024 09:00 AM	Water Quality Control Commission	Sabin Cleere Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 Or Remote Via Zoom
05/13/2024 09:00 AM	Water Quality Control Commission	Sabin Cleere Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 Or Remote Via Zoom
01/22/2024 04:00 PM	Administrative Appeals	Webinar Only: https://us02web.zoom.us/meeting/register/tZIqc-yspj0uGtT5EP36wKEjltxdR1mb0z3Y
01/23/2024 01:00 PM	Governor's Office of Information Technology	Online on Zoom: https://us02web.zoom.us/meeting/register/tZcudOCorDwuGtf8Yuf_MTn0ZBKY2GkwWJem
01/23/2024 09:30 AM	Division of Private Occupational Schools	Virtual Meeting via Zoom - https://cdhe.colorado.gov/our-board/board-meeting-schedule
01/16/2024 02:00 PM	Higher Education Commission	Virtual
01/30/2024 01:30 PM	Colorado State Patrol	Carrell Hall, Bldg. 100, 15165 S. Golden Rd., Golden, CO., 80401
01/30/2024 01:00 PM	Colorado State Patrol	Carrell Hall, Bldg. 100, 15165 S. Golden Rd., Golden, CO., 80401